

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

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

**2220-R-1.00                      STATEMENT OF BASIS AND PURPOSE**

- 1.00(1)                      The statutory authority for the enactment of these Rules and the repeal of previously existing Rules 1 CCR 301-8, Rules 2220-R-1.00 through 2220-R-10.07 (2) adopted by the State Board of Education on June 11, 1992, is found in Article 20 of Title 22, C.R.S., generally in Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-109. The purpose of these Rules is to provide the administrative framework for services offered to students pursuant to the terms of the Exceptional Children's Educational Act (ECEA). Current Rules 1 CCR 301-8, 2220-R-11.00 through 11.07 (5) are not affected by this enactment. The Rules reflect changes in educational practices and the manner of delivery of services to students within the legal parameters of the ECEA that have occurred since the prior Rules were originally enacted in 1976. The definitions of handicapping conditions and the eligibility criteria for receiving services have been clarified. The involvement of facilities that offer special education services to students has been recognized, and the conditions for approval for reimbursement have been established. Additionally, the criteria for creating and maintaining an administrative unit are set forth as are standards for the provision of educational services to eligible students. The Rules outline the procedure to be followed in identifying, assessing and serving those children eligible for services

under the ECEA. The Rules also elaborate on the various procedural safeguards available to administrative units and children and their parents pursuant to the ECEA.

- 1.00(2) The statutory basis for the amendments to these Rules adopted by the State Board of Education on September 11, 1997 is found in Sections 22-2-107(1)(c), 22-2-107(1)(q), 22-20-103(1.7) and (5.7), 22-20-104, 22-20-108(4.5) and (4.7), 22-20-109(4) and (5) and 22-20-114 C.R.S. The purpose of the amendments is to conform the Rules to recent legislative changes in the ECEA, specifically with regard to definitions of communication mode or language and literacy mode, development of individual educational programs, and tuition for children with disabilities in Charter Schools and Schools of Choice.
- 1.00(3) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), and 22-2-107(1)(q). The purpose of the amendments to Rule 1 CCR 301-8, 2220-R-3.04(1)(f) is to reflect additional statutory requirements for the development of minimum standards for Educational Interpreters for the Deaf as specified in C.R.S. 22-20-116. The amendments to Rules 1 CCR 301-8, 2220-R-2.02(9), 3.01(5)(a), 4.01(3)(c), 4.02(4)(k)(v), 5.02(4), 6.02(2), and 8.02(1)(f)(i) are the result of a review by Legislative Legal Services.
- 1.00(4) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reasons for the amendments to these Rules are to bring the state into compliance with the Individuals with Disabilities Education Act Reauthorization of 1997, to respond to the review of the BOCES conducted by the State Auditors Office, and to make technical amendments to sections that contain incorrect citations or grammatical errors. Subsections of Section 3.01(5)(a) have been deleted because they were allowed to expire by action of the General Assembly, and under Colorado law shall not be repromulgated [C.R.S. 24-4-103(8)(d)].
- 1.00(5) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act final regulations issued on March 12, 1999 and to rectify an incorrect citation.
- 1.00(6) The statutory authority for the amendments to these Rules, adopted by the State Board of Education on May 9, 2002, is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107 (1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act and to provide clarification for implementation to the field.

- 1.00(7) The statutory authority for the amendments to these Rules is found in the Colorado Revised Statutes, Title 22, Article 20, Sections 108 and 109. The purpose of these amendments is: (A) to address new requirements in HB04-1397 and HB04-1141 that amended the special education tuition responsibility provisions of the Exceptional Children's Educational Act, Section 22-20-109, C.R.S.; (B) to add clarification regarding special education administrative unit responsibilities for special education services; and (C) to add additional clarifying language.

## **2220-R-2.00**

### **DEFINITIONS AND CRITERIA**

Unless otherwise indicated by the context, the following definitions and criteria shall apply to the administration of the Exceptional Children's Educational Act:

#### **2.01 Administrative Unit**

An administrative unit shall mean a school district or board of cooperative services which is approved by the Department of Education according to the criteria established in 2220-R-3.01, that oversees the provision of special education services to children with disabilities.

##### **2.01(1) Administrative unit of residence.**

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

2.01(1)(a) If the child resides at one of the regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes, Colorado School for the Deaf and the Blind, or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services, such child shall be deemed to reside where the parent or guardian of the child resides.

2.01(1)(b) If parental rights have been relinquished by the parents or terminated by a court, the parents are incarcerated, cannot be located, reside out of state, or the child is legally emancipated, and, in all such circumstances, the Colorado Department of Human Services has made the placement within a facility, the child shall be considered a resident of the administrative unit in which such facility is located.

2.01(1)(c) If the child resides in a foster care home, the child shall be deemed to be a resident of the administrative unit in which the foster care home is located.

- 2.01(1)(d) When a child attends a school in another district under the provisions of the public schools of choice law, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.
- 2.01(1)(e) When a child attends a Charter School in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.
- 2.01(1)(f) When a child attends a public school on-line program in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.01(2) Administrative unit of attendance.

An administrative unit of attendance shall mean the unit that delivers the special education program for a child. It may be different from the administrative unit of residence when:

- 2.01(2)(a) The administrative unit of residence does not have an adequate number of children with similar needs, and chooses to send the child to another administrative unit for his or her special education program.
- 2.01(2)(b) The child resides at one of the regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes, Colorado School for the Deaf and the Blind, or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services, and the special education program is provided by an administrative unit other than the unit of residence.
- 2.01(2)(c) The child attends a Charter School, School of Choice or a public school on-line program and the Special Education program is provided by a special education administrative unit other than the administrative unit of residence.

2.01(3) Specific Responsibilities of Administrative Units

2.01(3)(a) Responsibility for special education functions and services

- 2.01(3)(a)(i) Except as is otherwise provided for in these Rules, the administrative unit of attendance is responsible for child identification, as defined by Section 4.01 of these Rules, IEP planning, delivery of special education services, re-evaluation, and the provision of a free appropriate public education to each

child with a disability attending school within the administrative unit, including convening and conducting required meetings related to such special education functions.

2.01(3)(a)(i)(A) A child with a disability attending public school is entitled to all special education services specified by the child's IEP and to a free appropriate public education.

2.01(3)(a)(i)(B) A child with a disability attending private school located within an administrative unit does not have an individual right to special education and related services. Following timely and meaningful consultation with private school representatives, the administrative unit may, at its discretion, designate which private school students with disabilities, if any, it will serve. Special education and related services for a private school child with a disability shall be delivered in accordance with a services plan developed for the child in accordance with the procedures established in these Rules for IEP development.

2.01(3)(a)(i)(C) The administrative unit of attendance is not responsible for the delivery of special education services or the provision of a free appropriate public education to a child with a disability placed in an eligible facility approved by the State Board of Education. It is, however, responsible for all other

special education functions identified in Section 2.01 of these Rules.

2.01(3)(a)(ii) If a child with a disability is not enrolled in school, the administrative unit of residence is responsible for the provision of legally required special education services.

2.01(3)(b) Responsibility for Special Education Tuition

2.01(3)(b)(i) The district of residence is responsible for the payment of special education tuition as defined by Section 2.03(2) of these Rules.

2.01(3)(b)(ii) The administrative units of attendance and residence shall be responsible for administering the special education tuition procedures set forth in Sections 2.03(2), 4.03(1)(C), 4.06, 4.07, 7.03 and 7.08 of these Rules. Each BOCES and its member districts shall jointly develop procedures and/or cooperative agreements that will ensure compliance with such Rules.

2.01(3)(b)(iii) If the child's district of attendance is not the child's district of residence but is within the same administrative unit as the child's district of residence, the payment of tuition, if any, shall be determined by the administrative unit and the two districts involved.

**2.02 Children with Disabilities**

Children with disabilities shall mean those persons between the ages of three and twenty-one who are unable to receive reasonable benefit from regular education without additional supports in the public schools because of specific disabling conditions. A child shall not be determined to have a disability due to lack of instruction in reading or math or limited English proficiency. A child upon reaching his/her third birthday becomes eligible for services as of that date. A child reaching the age of 21 after the commencement of the academic year has the right to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first. In such a case, the child is not entitled to extended school year services during the summer following such current academic year. Children with disabilities may also mean those persons from birth to age three as defined in Section 2.02 (10) of these Rules.

- 2.02(1) A child with a physical disability shall have a sustained illness or disabling physical condition which prevents the child from receiving reasonable educational benefit from regular education.
- 2.02(1)(a) A sustained illness means a prolonged, abnormal physical condition requiring continued monitoring characterized by limited strength, vitality, or alertness due to chronic or acute health problems and a disabling condition means a severe physical impairment. Conditions such as, but not limited to, traumatic brain injury, autism, attention deficit disorder and cerebral palsy may qualify as a physical disability, if they prevent a child from receiving reasonable educational benefit from regular education.
- 2.02(1)(b) Criteria for a physical disability preventing the child from receiving reasonable educational benefit from regular education should be dependent upon the child's diagnosis and degree of involvement in the regular school setting as characterized by any of the following:
- 2.02(1)(b)(i) The child's chronic health problem or sustained illness requires continual monitoring, intervention, and/or specialized programming in order to accommodate the effects of the illness so as to reasonably benefit from the education program.
- 2.02(1)(b)(ii) The child's disabling condition interferes with ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living to such a degree that it requires special services, equipment, and/or transportation.
- 2.02(2) A child with a vision disability shall have a deficiency in visual acuity and/or visual field and/or visual performance where, even with the use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from regular education.
- 2.02(2)(a) A vision disability shall be one or more of the following:
- 2.02(2)(a)(i) Visual acuity of no better than 20/70 in the better eye after correction.
- 2.02(2)(a)(ii) Visual field restriction to 20 degrees or less.
- 2.02(2)(a)(iii) A physical condition of visual system which cannot be medically corrected and

as such affects visual functioning to the extent that specially designed instruction is needed. These criteria are reserved for special situations such as, but not restricted to, oculomotor apraxia, cortical visual impairment, and/or a progressive visual loss where field and acuity deficits alone may not meet the aforementioned criteria.

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

2.02(2)(b) Criteria for a vision disability preventing the child from receiving reasonable educational benefit from regular education shall include:

2.02(2)(b)(i) Requirement for Braille and/or adaptation of educational material, or

2.02(2)(b)(ii) Requirement of specialized methods, aids, and/or equipment for learning, literacy, and/or mobility.

2.02(3) A child with a hearing disability shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech where, even with the help of amplification, the child is prevented from receiving reasonable educational benefit from regular education.

2.02(3)(a) A "deficiency in hearing sensitivity" shall be one of the following:

2.02(3)(a)(i) An average pure tone hearing loss in the speech range (500 - 2000 Hz) of at least 20 dBHL in the better ear which is not reversible within a reasonable period of time.

2.02(3)(a)(ii) An average high frequency, pure tone hearing loss of at least 35 dBHL in the better ear for two or more of the following frequencies: 2000, 4000 or 6000 Hz.

2.02(3)(a)(iii) A unilateral hearing loss of at least 35 dBHL which is not reversible within a reasonable period of time.

2.02(3)(b) Criteria for a hearing disability preventing the child from receiving reasonable educational benefit from regular education shall include one or more of the following:

2.02(3)(b)(i) Sound-field word recognition (unaided) of less than 75% in quiet as measured with standardized open-set audiometric speech discrimination tests presented at average conversational speech (50-55 dBHL). Interpretation shall be modified for closed-set tests.

2.02(3)(b)(ii) Receptive and/or expressive language delay as determined by standardized tests:

- under 3 years: less than one-half of expected development for chronological age.
- 3 to 8 years: 1 year delay or more.
- 9 to 13 years: 2 years delay or more.
- 14 to 21 years: 3 years delay or more.

2.02(3)(b)(iii) An impairment of speech articulation, voice and/or fluency.

2.02(3)(b)(iv) Significant discrepancy between verbal and nonverbal performance on a standardized intelligence test.

2.02(3)(b)(v) Delay in reading comprehension due to language deficit.

2.02(3)(b)(vi) Poor academic achievement.

2.02(3)(b)(vii) Inattentive, inconsistent and/or inappropriate classroom behavior.

2.02(4) A child with significant limited intellectual capacity shall have reduced general intellectual functioning which prevents the child from receiving reasonable educational benefit from regular education.

2.02(4)(a) Reduced general intellectual functioning shall mean limited intellectual capacity or ability which usually originates in the developmental period and exists concurrently with impairment in adaptive behavior.

2.02(4)(b) Criteria for significant limited intellectual capacity preventing the child from receiving reasonable educational benefit from regular education shall include:

2.02(4)(b)(i) A score of more than 2.0 standard deviations below the mean on individually administered measures of cognition.

2.02(4)(b)(ii) Evidence that the level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibilities.

2.02(4)(b)(iii) A deficiency in academic achievement, as indicated by scores 2.0 standard deviations below the mean in measures of language, reading and math.

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

2.02(5) A child with a significant identifiable emotional disability shall have emotional or social functioning which prevents the child from receiving reasonable educational benefit from regular education.

2.02(5)(a) Emotional or social functioning shall mean one or more of the following:

2.02(5)(a)(i) Exhibits pervasive sad affect, depression and feelings of worthlessness; cries suddenly or frequently.

2.02(5)(a)(ii) Displays unexpected and atypical affect for the situation.

2.02(5)(a)(iii) Excessive fear and anxiety.

2.02(5)(a)(iv) Persistent physical complaints not due to a medical condition.

2.02(5)(a)(v) Exhibits withdrawal, avoidance of social interaction and/or lack of personal care to an extent that maintenance of satisfactory interpersonal relationships is prevented.

- 2.02(5)(a)(vi) Out of touch with reality; has auditory and visual hallucinations, thought disorders, disorientation or delusions.
- 2.02(5)(a)(vii) Cannot get mind off certain thoughts or ideas; cannot keep self from engaging in repetitive and/or useless actions.
- 2.02(5)(a)(viii) Displays consistent pattern of aggression toward objects or persons to an extent that development or maintenance of satisfactory internal relationships is prevented.
- 2.02(5)(a)(ix) Pervasive oppositional, defiant or noncompliant responses.
- 2.02(5)(a)(x) Significantly limited self-control, including an impaired ability to pay attention.
- 2.02(5)(a)(xi) Exhibits persistent pattern of stealing, lying or cheating.
- 2.02(5)(a)(xii) Persistent patterns of bizarre and/or exaggerated behavior reactions to routine environments.
- 2.02(5)(b) Criteria for significant identifiable emotional disability preventing the child from receiving reasonable education benefit from regular education shall include the following characteristics and qualifiers:
- 2.02(5)(b)(i) One or both of the following characteristics shall be present:
- Academic functioning: an inability to receive reasonable educational benefit from regular education which is not primarily the result of intellectual, sensory or other health factors, but due to the identified emotional condition.
  - Social/emotional functioning: an inability to build or maintain interpersonal relationships which significantly interferes with the child's social development. Social development involves those adaptive behaviors and social skills which enable a child to meet environmental

demands and assume responsibility for his/her own and others' welfare.

2.02(5)(b)(ii) All four of the following qualifiers shall be documented for either of the above characteristics demonstrated. The first qualifier may not be applicable in the case of court ordered placements, triennial reviews and identification of children ages five years and younger.

- A variety of instructional and/or behavioral interventions were implemented within regular education and the child remains unable to receive reasonable educational benefit from regular education or his/her presence continues to be detrimental to the education of others.
- Indicators of social/emotional dysfunction exist to a marked degree; that is, at a rate and intensity above the child's peers and outside of his/her ethnic and cultural norms and outside the range of normal development expectations.
- Indicators of social/emotional dysfunction are pervasive, and are observable in at least two different settings within the child's environment, one of which shall be school.
- Indicators of social/emotional dysfunction have existed over a period of time and are not isolated incidents or transient, situational responses to stressors in the child's environment.

2.02(6) A child with perceptual or communicative disability shall have a disorder in one or more of the psychological processes involved in understanding or in using language which prevents the child from receiving reasonable educational benefit.

2.02(6)(a) A basic disorder in the psychological processes affecting language and/or learning may manifest itself in an impaired ability to listen, think, attend, speak, read, write, spell or do mathematical calculations. The term perceptual/communicative disability does not include students who have learning problems which are primarily

the result of visual, hearing, or motor handicaps, or limited intellectual capacity or significant identifiable emotional disability, or who are of environmental, cultural, or economic disadvantage.

2.02(6)(b) Criteria for a perceptual or communicative disability preventing a child from receiving reasonable educational benefit from regular education shall include documentation of both.

2.02(6)(b)(i) A disorder in the psychological process which affects language and learning as evidenced by:

- Significant discrepancy between estimated intellectual potential and actual level of performance, and
- Difficulty with perceptual, cognitive and/or language processing.

2.02(6)(b)(ii) And significantly impaired achievement in one or more of the following areas:

- Prereading and/or reading skills.
- Reading comprehension.
- Written language expression, such as problems in handwriting, spelling, sentence structure and written organization.
- Comprehension, application and retention of math concepts.

2.02(7) A child with speech-language disability shall have a communicative disorder which prevents the child from receiving reasonable educational benefit from regular education.

2.02(7)(a) Speech-language disorders may be classified under the headings of articulation, fluency, voice, functional communication or delayed language development and shall mean a dysfunction in one or more of the following:

2.02(7)(a)(i) Receptive and expressive language (oral and written) difficulties including syntax (word order, word form, developmental level), semantics (vocabulary, concepts and word finding), and pragmatics (purposes and uses of language).

- 2.02(7)(a)(ii) Auditory processing, including sensation (acuity), perception (discrimination, sequencing, analysis and synthesis) association and auditory attention.
- 2.02(7)(a)(iii) Deficiency of structure and function of oral peripheral mechanism.
- 2.02(7)(a)(iv) Articulation including substitutions, omissions, distortions or additions of sound.
- 2.02(7)(a)(v) Voice, including deviation of respiration, phonation (pitch, intensity, quality), and/or resonance.
- 2.02(7)(a)(vi) Fluency, including hesitant speech, stuttering, cluttering and related disorders.
- 2.02(7)(a)(vii) Problems in auditory perception such as discrimination and memory.
- 2.02(7)(b) Criteria for a speech-language disability preventing a child from receiving reasonable educational benefit from regular education shall include:
  - 2.02(7)(b)(i) Interference with oral and/or written communication in academic and social interactions in his/her primary language.
  - 2.02(7)(b)(ii) Demonstration of undesirable or inappropriate behavior as a result of limited communication skills.
  - 2.02(7)(b)(iii) The inability to communicate without the use of assistive, augmentative/alternative communication devices or systems.
- 2.02(8) A child with multiple disabilities shall have two or more areas of significant impairment, one of which shall be a cognitive impairment except in the case of deaf-blindness. Cognitive impairment shall mean significant limited intellectual capacity. The other areas of significant impairment include: physical, visual, auditory, communicative or emotional. The combination of such impairments creates a unique condition that is evidenced through a multiplicity of needs which prevent the child from receiving reasonable educational benefit from regular education.
  - 2.02(8)(a) The definition of impairment shall be the same as that for each of the single disabilities.

2.02(8)(b) Criteria for multiple disabilities preventing a child from receiving reasonable educational benefit from regular education shall be the same as that considered for each of the single disabilities. Indicators for the combination of impairments creating a unique condition shall be:

2.02(8)(b)(i) Inability to comprehend and utilize instructional information.

2.02(8)(b)(ii) Inability to generalize skills consistently.

2.02(8)(b)(iii) Inability to communicate fluently.

2.02(8)(b)(iv) Inability to demonstrate problem solving skills when such information is presented in a traditional academic curriculum.

2.02(9) A preschool child with a disability shall be three through five years of age and shall, by reason of one or more of the following conditions, be unable to receive reasonable educational benefit from regular education: long-term physical impairment or illness, significant limited intellectual capacity, significant identifiable emotional disorder or identifiable perceptual or communicative disorders, or speech disorders.

2.02(9)(a) Children ages three through five who would otherwise qualify according to one or more of the above categorical conditions but for whom the category cannot be appropriately determined may qualify for preschool special education if multiple sources of information are utilized and if such children meet one or more of the following criteria:

2.02(9)(a)(i) Children who rank at the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (76 if the mean is 100 and the standard deviation is 16) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: cognition, communication, physical and psychosocial.

2.02(9)(a)(ii) Children with identifiable conditions known through empirical data to be associated with significant delays in development.

2.02(9)(a)(iii) In extraordinary cases when a standardized score cannot be determined, a child may be determined disabled based on the informed opinion of the assessment team which includes the

parent(s) and with documentation of the rationale for the inability to obtain a standardized score.

2.02(9)(b) Criteria for a preschool child being unable to receive reasonable educational benefit from regular education shall be a substantial discrepancy between the child's performance and behavior as compared to children of a comparable age.

2.02(10) An infant/toddler with a disability shall be a child from birth through two years of age who has significant developmental delays and who potentially may be unable to receive reasonable educational benefit from regular education is eligible for early intervention services and shall be defined by one of the following:

2.02(10)(a) Significant developmental delays shall mean those children who have a significant delay in at least one or more of the following areas of development: cognition, communication, physical, motor, vision, hearing, psychosocial and self-help skills as assessed by qualified professionals utilizing appropriate methods and procedures. Significant development delay shall mean, development that qualified personnel determine to be outside the range of "normal" or "typical" for a same aged peer. Conditions associated with significant developmental delays shall mean those children who have identifiable conditions known to have a high probability of resulting in significant developmental delays, but who may not be exhibiting delays in development at the time of diagnosis. Those identifiable conditions are:

2.02(10)(a)(i) Chromosomal syndromes and conditions associated with mental retardation.

2.02(10)(a)(ii) Congenital syndromes and conditions associated with delays in development.

2.02(10)(a)(iii) Sensory impairments.

2.02(10)(a)(iv) Metabolic disorders.

2.02(10)(a)(v) Prenatal and perinatal infections and significant medical problems.

2.02(10)(a)(vi) Low birth weight infants weighing less than 1,200 grams.

2.02(10)(a)(vii) Post-natal acquired problems known to result in significant developmental delays.

**2.03 Special Education Revenues and Expenditures**

2.03(1) Special education expenditures.

Special education expenditures are those costs which are incurred by an administrative unit for professional services associated with special education referrals and assessments of children who may be disabled and for the provision of special education services as identified on individual students' Individualized Educational Programs (IEPs), and do not include costs of the regular education program. An administrative unit which maintains and operates special education programs approved by the Department of Education for the education of students with disabilities shall use its ECEA and its federal funds received through the Department to pay for the special education expenditures listed below:

- 2.03(1)(a) Salaries of:
  - 2.03(1)(a)(i) Special education teachers.
  - 2.03(1)(a)(ii) Home-hospital teachers for students with disabilities.
  - 2.03(1)(a)(iii) Speech/language specialists.
  - 2.03(1)(a)(iv) Specialty teachers.
  - 2.03(1)(a)(v) Instructional paraprofessionals.
  - 2.03(1)(a)(vi) Tutor interpreters.
  - 2.03(1)(a)(vii) School nurses.
  - 2.03(1)(a)(viii) Occupational therapists.
  - 2.03(1)(a)(ix) Physical therapists.
  - 2.03(1)(a)(x) School psychologists.
  - 2.03(1)(a)(xi) School social workers.
  - 2.03(1)(a)(xii) Audiologists.
  - 2.03(1)(a)(xiii) Other professionals.
  - 2.03(1)(a)(xiv) Special education administrators.
  - 2.03(1)(a)(xv) Special education office support.
  - 2.03(1)(a)(xvi) Other non-certificated or non licensed support.

- 2.03(1)(b) Employee benefits.
- 2.03(1)(c) Supplies and materials.
- 2.03(1)(d) Equipment which is used especially for individual students' special education programs and services.
- 2.03(1)(e) Purchased services contracts for:
  - 2.03(1)(e)(i) Personal services.
  - 2.03(1)(e)(ii) Tuition to other administrative units, and approved tuition rates to community centered boards and eligible facilities.
  - 2.03(1)(e)(iii) Staff travel, including travel expenses for inservice education.
  - 2.03(1)(e)(iv) Other purchased services.
- 2.03(1)(f) Dues, fees and other miscellaneous objects of expenditure.

2.03(2) Tuition costs.

Tuition costs for a child with a disability who receives his or her special education services in a community centered board, eligible facility, public school of choice pursuant to Section 22-36-101, C.R.S., charter school pursuant to Section 22-30.5-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S., shall mean the amount of expenditures for special education services over and above applicable revenues as defined in Section 2.03(3) of these Rules.

- 2.03(2)(a) When a child with a disability is placed, by a public agency, into a group home, community centered board, or eligible facility, the district of residence is responsible for paying the educational costs over and above applicable revenues, also known as tuition costs. The district of residence shall count the child as a child in a group home, community centered board, or eligible facility on the October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The tuition costs shall be determined by the Department of Education for each community centered board and eligible facility in accordance with Section 7.03 of these Rules. Such tuition costs shall be the maximum amount the district of residence shall be obligated to pay for the special education program. The district of residence may pay a higher tuition cost than the cost established and approved by the Department of Education for children in need of specialized services, if these services were

included in a child's IEP but were not included in the approved tuition cost. The district of residence is not responsible for paying tuition costs for extended school year services for a child unless the child's IEP specifies the need for extended school year services. The Department of Education does not set the amount of tuition costs the administrative unit of attendance may charge the district of residence for children in group homes served by the administrative unit of attendance. When a child with a disability is placed without the written approval of the administrative unit of residence, any tuition costs shall be the financial responsibility of the court, parent, guardian, or agency making such placement. If the administrative unit of residence does not provide written notice of disapproval within fifteen days of notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the administrative unit of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined in accordance with Sections 5.04(1) and (2) of these Rules.

2.03(2)(a)(i) If an administrative unit of residence initiates a placement of a child with a disability into a community centered board or eligible facility for its day treatment or residential program, and the community centered board or eligible facility also provides the child's educational program, the district of residence shall count the child as a child in a community centered board or eligible facility on the October 1 Count, and the administrative unit of residence shall count the child on its December 1 Special Education Count. The community centered board or eligible facility shall bill the department for the state average per pupil operating revenue, and the administrative unit of residence shall pay the community centered board or eligible facility all remaining day treatment or residential costs, as well as any additional educational costs agreed to by the parties.

2.03(2)(a)(ii) If an administrative unit of residence places a child with a disability into a community centered board or eligible facility for the educational program only, the district of residence must count the child on the

October 1 Count as being in a private school placement, and the administrative unit of residence shall count the child on its December 1 Special Education Count as being in a private school placement. The community centered board or eligible facility shall not bill the Department for the state average PPOR for the child. Instead the community centered board or eligible facility shall bill the administrative unit of residence for the total cost of the child's educational program, as agreed to by the community centered board or eligible facility and the administrative unit of residence.

2.03(2)(b) When a child with a disability enrolls in and attends a charter school pursuant to 22-30.5-101, C.R.S., including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S., the district of residence shall be responsible for paying to the charter school or the chartering district, whichever is providing the special education services, the tuition costs incurred in educating the child. The chartering school district shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The amount of the tuition costs shall be determined pursuant to Section 7.03 of these Rules. A written approval for the placement is not required from the administrative unit of residence nor from the district of residence. Nothing in this subsection shall be construed to apply to the charter contract entered into between a charter school and its chartering school district. The tuition responsibility shall be reflected in a contract among the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, in a form approved by the chartering school district, and consistent with Section 4.07(1) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

2.03(2)(b)(i) The provisions in Section 2.03(2)(b) also apply when:

2.03(2)(b)(i)(A) A child is already enrolled in the charter school and is subsequently identified as a child with a disability in connection

with the child find process; or

2.03(2)(b)(i)(B) A charter school, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

2.03(2)(b)(ii) The provisions in Section 2.03(2)(b) apply only if the charter school complies with the Rules herein governing tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with Sections 2.03(2)(b), 4.07(1), 7.03(2) and 7.08(2) of the Rules. Section 4.06(2) of these Rules applies regardless of whether the charter school intends to bill the district of residence for tuition costs. This subsection in no way relieves the charter school or the administrative unit of attendance, depending on the charter contract, from the obligation to provide a free appropriate public education to the children with disabilities attending the charter school.

2.03(2)(b)(iii) Tuition shall be owed to the charter school for only those children with disabilities receiving special education and related services for greater than sixty percent of their educational time, as specified by their IEPs.

2.03(2)(c) When a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to the provisions of Section 22-36-101, C.R.S., and the school does not provide the child an on-line program pursuant to Section 22-33-104.6, C.R.S., and the school is not a charter school pursuant to Section 22-30.5-104, C.R.S., the district of residence shall be responsible for paying the tuition costs for educating the child to the district of attendance. The district where the child attends shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the

administrative unit of residence, and the district of residence, if it is not an administrative unit, must negotiate a contract which does not need to be approved by the Department of Education. No written approval for the placement is required from the administrative unit of residence and/or the district of residence. The administrative unit of attendance shall provide notice in accordance with Section 4.06(1) of these Rules. Tuition shall be owed to the district of attendance for only those children with disabilities receiving special education and related services for greater than 60 percent of their educational time, as specified by their IEPs. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

- 2.03(2)(c)(i) The provisions in Section 2.03(2)(c) of these Rules also apply when:
  - 2.03(2)(c)(i)(A) A child is already enrolled in the district of attendance under public schools of choice and is subsequently identified as a child with a disability in connection with the child find process; or
  - 2.03(2)(c)(i)(B) A district of attendance, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.
- 2.03(2)(c)(ii) The provisions in Section 2.03(2)(c) of these Rules apply only if the district of attendance complies with the Rules herein governing tuition costs. Likewise, if the district of attendance does not intend to seek tuition costs, neither it nor the administrative unit of attendance is required to comply with Sections 2.03(2)(c), 7.03(3) and 7.08(1) of these Rules. Section 4.06(1) of these Rules applies regardless of whether the district of attendance intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance from the obligation to provide a free appropriate

public education to the children with disabilities attending school in the administrative unit under public schools of choice.

2.03(2)(d) An administrative unit may purchase services from one or more administrative units where an appropriate special education program exists. The district of residence shall count the child for the October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The two administrative units must negotiate a contract, including the cost of the program, which does not need to be approved by the Department of Education.

2.03(2)(e) When a child with a disability enrolls in and attends a public on-line program pursuant to Section 22-33-104.6, C.R.S., that is not provided by a charter school, the district of residence shall be responsible for paying to the provider of the on-line program the tuition costs incurred in educating the child. The district where the child attends school shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The tuition responsibility shall be reflected in a contract among the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, in accordance with Section 4.06(3) of these Rules, and in a form approved by the Department of Education. A written approval for the placement is not required from the administrative unit of residence nor from the district of residence. The on-line provider shall provide notice in accordance with these Rules when a child with a disability applies to enroll in the on-line program. The amount of the tuition costs shall be determined pursuant to Section 7.03(4) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

2.03(2)(e)(i) The provisions in Section 2.03(e) of these Rules also apply when:

2.03(2)(e)(i)(A) A child is already enrolled in the on-line program and is subsequently identified as a child with a disability in connection with the child find process; or

2.03(2)(e)(i)(B) An on-line program, which has not been billing for tuition costs for a child with a disability enrolled in its program, decides to initiate a tuition contract.

2.03(2)(e)(ii) The provisions in Section 2.03(e) of these rules apply only if the on-line program complies with the Rules herein governing tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, Sections 2.03(2)(e), 4.07(2), 7.03(4) and 7.08(3) of these Rules do not apply. Section 4.06(3) of these Rules applies regardless of whether the on-line program intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance for the on-line program from the obligation to provide a free appropriate public education to the children with disabilities attending the on-line program.

2.03(2)(e)(iii) Tuition shall be owed to the provider of the on-line program for only those children with disabilities receiving special education and related services for greater than sixty percent of their educational time, as specified by their IEPs.

2.03(2)(e)(iv) The provisions in Section 2.03(2)(e), 4.06(3), 4.07(2), 7.03(4) and 7.08(3) of these Rules do not apply to any on-line program that is providing services that are supplemental to the curriculum of a school district.

2.03(3) Applicable revenues.

Applicable revenues shall mean funds provided for the special education program of a child with disabilities and shall include:

2.03(3)(a) The Per Pupil Operating Revenue (PPOR) or the Per Pupil Revenue (PPR), whichever is applicable, as follows:

2.03(3)(a)(i) The state average PPOR when an administrative unit of residence initiates a

placement of a child with a disability into a community centered board or eligible facility for its day treatment or residential program, and the community centered board or eligible facility also provides the child's educational program;

- 2.03(3)(a)(ii) The PPOR of the district of residence when an administrative unit of residence places a child with a disability into a community centered board or eligible facility for the educational program only;
  - 2.03(3)(a)(iii) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Section 22-30.5-101, C.R.S., not including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S.;
  - 2.03(3)(a)(iv) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., and the school does not provide the child an on-line program and the school is not a charter school;
  - 2.03(3)(a)(v) The PPOR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or
  - 2.03(3)(a)(vi) The state minimum PPR when a child with a disability enrolls in and attends a public on-line program pursuant to Section 22-33-104.6, C.R.S., including an on-line program provided by a charter school.
- 2.03(3)(b) For three- and four-year old children with disabilities, and for five-year old children with disabilities who are not enrolled in kindergarten, 50 percent PPOR shall be considered applicable revenue.
- 2.03(3)(c) Monies available from federal sources.
- 2.03(3)(d) Monies received under ECEA.

- 2.03(3)(e) Monies received from other state agencies to cover special education program costs.
- 2.03(3)(f) Monies received from other administrative units for special education expenditures.
- 2.03(3)(g) Monies received through grants and donations awarded for the purpose of supporting special education programs as described in the IEP of children with disabilities.

**2.04 State Operated Programs**

State operated programs shall mean the Colorado School for the Deaf and the Blind and those facilities with approved school programs operated by the Department of Human Services and the Department of Corrections and supervised by the Colorado Department of Education.

**2.05 Eligible Facility**

An eligible facility shall mean a group care facility, day treatment center or hospital that offers a school program providing special education services for children with disabilities ages three to twenty-one that has been approved by the State Board of Education in accordance with Section 3.02 of these Rules.

**2.06 Eligibility for Receiving Per Pupil Operating Revenue and Tuition Costs**

- 2.06(1) Administrative units of attendance as defined in Section 2.01(2)(b) of these Rules.
- 2.06(2) Community centered boards as defined in Section 27-10.5-102 (3), C.R.S.
- 2.06(3) Facilities licensed by the Department of Human Services which include the following:
  - 2.06(3)(a) Residential child care facilities.
  - 2.06(3)(b) Day treatment centers.
  - 2.06(3)(c) Residential treatment centers.
  - 2.06(3)(d) Secure residential treatment centers.
  - 2.06(3)(e) Specialized group facilities.
- 2.06(4) Hospitals licensed by the Colorado Department of Health.

**2.07 Parent and Educational Surrogate Parent**

2.07(1) Parent shall mean biological parent, adoptive parent, guardian, but not the state if the child is a ward of the state, a person with appropriate legal authority acting in place of the parent (such as a legally authorized grandparent or step-parent with whom the child lives), or a person having legal custody of the child.

2.07(2) Educational surrogate parent shall mean a person who has training and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the state.

**2220-R-3.00**

**ADMINISTRATION**

**3.01 Standards For Administrative Units**

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

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

3.01(1)(a) Enrollment of 4,000 pupils in membership or at least 400 children with disabilities. Variance from this specific requirement may be requested of the Department of Education according to the procedures outlined in 7.06 of these Rules.

3.01(1)(a)(i) Demonstration that the district(s) seeking a variance are able to meet the obligation to provide appropriate services to children with disabilities. If the manner in which the district(s) propose to meet this obligation is determined to be inadequate by the Department of Education, the variance will not be granted.

3.01(1)(a)(ii) Demonstration that the administrative unit from which the district(s) is proposing to withdraw will be able to continue to provide appropriate educational services to children with disabilities. If such demonstration cannot be made to the satisfaction of the Department of Education, the variance will not be granted.

3.01(1)(a)(iii) Commitment to comply with all other requirements of this section of the Rules.

3.01(1)(a)(iv) The establishment of additional administrative units does not create a hardship on the Department of Education. If such is determined to be the case by the Department of Education, the Department reserves the right to refuse the approval of additional administrative units.

3.01(1)(b) Employment of sufficient instructional and related services staff to identify and assess children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.

- 3.01(1)(c) Employment of a qualified and certificated full-time professional who has the flexibility to function at least half time as director of special education and who has the authority to assure that all the duties and responsibilities of the administrative unit as specified in Section 3.01(5) of these Rules are carried out.
  - 3.01(1)(d) Development and implementation of an approved special education comprehensive plan.
  - 3.01(1)(e) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.
  - 3.01(1)(f) Governance by a board which may be a local school board of education or a Board of Cooperative Educational Services.
- 3.01(2) Every school district and Board of Cooperative Services that provides services to children with disabilities shall be an administrative unit or a part of an administrative unit.
- Small districts that do not meet the qualifications of an administrative unit and are not a part of a board of cooperative services shall contract to become part of an approved unit and shall abide by all policies and procedures contained in that unit's comprehensive plan. Such contract shall be approved by the Department of Education.
- 3.01(2)(a) The Department of Education may disapprove an application for an administrative unit if it has excluded a contiguous district that does not meet the criterion set forth above.
  - 3.01(2)(b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 2.01(3) of the Rules.
- 3.01(3) Application for new administrative units.
- Districts and boards of cooperative services desiring to form new or reorganized administrative units shall submit an application to the Department of Education by November 1 of the year preceding the fiscal year in which the new administrative unit is to begin operation. This application shall include:
- 3.01(3)(a) A letter of intent which:
    - 3.01(3)(a)(i) specifies the objectives to be sought by the change;

- 3.01(3)(a)(ii) outlines how the proposed administrative unit will comply with the requirements of these Rules;
  - 3.01(3)(a)(iii) explains how the proposed administrative unit will efficiently address the administration of and the provision of special education services; and
  - 3.01(3)(a)(iv) specifies the manner in which it will comply with the by-laws of the Board of Cooperative Services if it is a member of such.
- 3.01(3)(b) Comprehensive plans for the newly reorganized administrative units.
- 3.01(3)(c) Budget projections reflecting the anticipated revenues and expenditures for the administrative units should the request be approved, as well as projections for the existing administrative unit without the change.
- 3.01(4) Department of Education approval.
- The Department of Education shall have 60 days in which to approve or deny an application for a new administrative unit or to request other clarification.
- 3.01(4)(a) When the formation of a new administrative unit is approved, such administrative unit shall be expected to satisfy all the qualifications for the efficient administration of and provision of services for administrative units stipulated in these Rules, including the approval of a comprehensive plan.
  - 3.01(4)(b) If the Department of Education determines that the proposed administrative unit will not be able to satisfy the qualifications for the efficient administration of and provision of services, it shall present its reasons for such finding in writing.
  - 3.01(4)(c) If, within 30 days of the Department's determination to disapprove the formation of a new administrative unit, the school districts or boards of cooperative services affected are unable to negotiate a satisfactory resolution of differences with the Department of Education, they may utilize standard appeal procedures in accordance with Section 7.07 of these Rules.
  - 3.01(4)(d) Existing units which do not meet the qualifications and/or for the efficient administration of or provision of services

stipulated in these Rules shall be subject to revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.

3.01(5) Duties and responsibilities of administrative units.

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

- 3.01(5)(a) The development and adoption of a comprehensive plan in accordance with the applicable statutes and regulations. Such plan shall also include a description of the following:
  - 3.01(5)(a)(i) Financial commitments and agreements of the unit and of the participating districts for special education programs and services.
  - 3.01(5)(a)(ii) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.
  - 3.01(5)(a)(iii) Procedures for regular, periodic evaluation of programs, services and student progress.
- 3.01(5)(b) Resource allocation and management to assure adequate personnel, facilities, materials and equipment in accordance with the provisions of Section 3.03 of these Rules to meet the needs of children with disabilities.
- 3.01(5)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
- 3.01(5)(d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.
- 3.01(5)(e) Child find, referral, assessment, planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of the Rules.
- 3.01(5)(f) Procedures for prior notice, consent, confidentiality and due process in accordance with Section 6.00 of the Rules.
- 3.01(5)(g) Staff development in accordance with Section 3.05 of these Rules.

3.01(5)(h) Program evaluation in accordance with Section 3.06 of these Rules.

**3.02 Standards for Eligible Facilities and State Operated Programs**

3.02(1) Eligible Facilities

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

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

3.02(1)(a)(i) Prior licensing by appropriate state agencies.

3.02(1)(a)(ii) Placements must be due to the need for mental health and/or medical treatment.

3.02(1)(a)(iii) In the case of Day Treatment programs, placements must be due to the child being considered at risk for out of home placement.

3.02(1)(a)(iv) The education of the children in placement at the eligible facility is the responsibility of the state or local education agency.

3.02(1)(a)(v) The education of children in placement is not the responsibility of another Colorado State agency or entity.

3.02(1)(a)(vi) Employment of sufficient qualified administrative, instructional and support staff to plan for and provide services for all children who are determined to have a disability.

3.02(1)(a)(vii) Designation of a person knowledgeable about special education regulations and services to serve as the administrator or supervisor of special education. Beginning with the 2003-2004 school year, employment of at least a part time Director of Special Education to supervise the education program.

3.02(1)(a)(viii) Development and implementation of an approved comprehensive plan including quality standards as set forth in guidelines developed by the Department of Education.

3.02(1)(a)(ix) Agree to carry out the duties and responsibilities identified in Section 3.02(3) of these Rules.

3.02(1)(b) Approval of facilities.

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

3.02(1)(b)(i) Facilities wishing to establish an approved school program shall submit a letter of intent to the Department of Education, Special Education Services Unit, at least 90 days prior to the day on which the facility is to begin its on-grounds school.

3.02(1)(b)(ii) Facilities wishing to establish an approved school program shall submit to the Department of Education a comprehensive plan 30 days prior to the submission of its application for approval to the State Board of Education.

3.02(1)(b)(iii) If the Department of Education determines that the facility meets state requirements as defined in Section 3.02(1) of these Rules, the Department shall notify the facility that it is being recommended to the State Board of Education for approval. If the Department of Education determines that the eligible facility is unable to meet requirements as defined in Section 3.02(1) of these Rules, it shall present its reasons for such findings in writing.

3.02(1)(b)(iv) If within 30 days of the Department's disapproval, the facility is unable to negotiate a satisfactory resolution of differences with the Department of Education, it may utilize standard appeal procedures in accordance with Section 7.07 of these Rules.

3.02(1)(c) Maintenance of approved status.

3.02(1)(c)(i) In order to maintain approval of its school program, each facility shall:

- Comply with required policies and procedures as set forth in these rules.
- Complete an annual self-assessment based on the Quality Standards for Eligible Facilities and develop a school improvement plan.
- Notify the Colorado Department of Education, Special Education Services Unit, in writing in the event that:
  - The management or administration of the facility changes,
  - The facility is purchased by or merged with another agency, or
  - There is a change of educational coordinator.

3.02(1)(c)(ii) The Colorado Department of Education will review the notification and determine whether the facility will retain its eligible status.

3.02(1)(d) Review of approved status.

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

3.02(1)(d)(i) Any application for a new or different license from the Department of Human Services,

3.02(1)(d)(ii) A change in location or the addition of another location,

3.02(1)(d)(iii) Change of program focus,

3.02(1)(d)(iv) Change in the age of students served,

3.02(1)(d)(v) Any increase in the number of students included in the PPOR billing above the number originally approved, or

3.02(1)(d)(vi) Other factors unique to the program or situation.

- 3.02(1)(e) Duties and responsibilities of eligible facilities.
- An eligible facility with an approved on-grounds school shall be responsible for:
- 3.02(1)(e)(i) Development of a comprehensive plan in accordance with the provisions of Section 3.02(6) of these Rules.
  - 3.02(1)(e)(ii) Provision of resources for personnel, facilities, materials and equipment which are necessary to meet the needs of children with disabilities.
  - 3.02(1)(e)(iii) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
  - 3.02(1)(e)(iv) Maintenance and access to student records in accordance with Section 7.01 of these Rules.
  - 3.02(1)(e)(v) Planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of these Rules.
  - 3.02(1)(e)(vi) Adherence to procedures for prior notice, consent, confidentiality and due process in accordance with Section 6.00 of these Rules.
  - 3.02(1)(e)(vii) Staff development.
  - 3.02(1)(e)(viii) Program evaluation.
- 3.02(1)(f) Comprehensive plan.
- Each facility seeking approval for an on-grounds school shall develop a comprehensive plan in which are stated the policies and procedures to be followed in order to be in compliance with all applicable state laws and regulations. At a minimum, the comprehensive plan shall include but not be limited to the following:
- 3.02(1)(f)(i) An explanation of the purpose of the eligible facility, especially as it relates to treatment, care and education of children with disabilities.
  - 3.02(1)(f)(ii) A description of the population to be served by the facility.

3.02(1)(f)(iii) Policies and procedures to be followed to meet all appropriate federal and state statutes and regulations.

3.02(1)(f)(iv) A description of the education curriculum and how the treatment and care support that curriculum and the child's individualized educational program (IEP).

3.02(1)(f)(v) Approval of the facility's governing body.

3.02(1)(g) Revocation of Approved Status.

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

3.02(2) State Operated Programs

3.02(2)(a) Minimum Standards for State Operated Programs.

State Operated Programs shall satisfy the following standards.

3.02(2)(a)(i) Employment of sufficient instructional and related services staff to identify and assess children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.

3.02(2)(a)(ii) Employment of at least a half time Director of Special Education who has the authority to assure that all the duties and responsibilities of the State Operated Program as specified in these Rules are carried out.

3.02(2)(a)(iii) Development and implementation of an approved special education comprehensive plan.

3.02(2)(a)(iv) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.02(2)(a)(v) Provision of special education and related services to all children with disabilities placed in or committed to the State Operated Program.

3.02(2)(b) Duties and Responsibilities of State Operated Programs.

A State Operated Program shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for the development and adoption of a comprehensive plan in accordance with the applicable statutes and regulations. Such plan shall also include a description of the following:

3.02(2)(b)(i) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.

3.02(2)(b)(ii) Procedures for regular, periodic evaluation of programs, services and student progress.

3.02(2)(b)(iii) Resource allocation and management to assure adequate personnel, facilities, materials and equipment in accordance with the provisions of these Rules to meet the needs of children with disabilities.

3.02(2)(b)(iv) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

3.02(2)(b)(v) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.

3.02(2)(b)(vi) Child Find, referral, assessment, planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of the Rules.

3.02(2)(b)(vii) Procedures for prior notice, consent, confidentiality and due process in

accordance with Section 6.00 of the Rules.

3.02(2)(b)(viii) Staff development in accordance with Section 3.05 of these Rules.

3.02(2)(b)(ix) Program evaluation in accordance with Section 3.06 of these Rules.

### **3.03 Resource Allocation**

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

3.03(1) Each administrative unit shall have a method or standards by which it determines the number and types of special education personnel required to meet the needs of children with disabilities. Such method or standard shall be a part of the local comprehensive plan.

3.03(2) Each administrative unit shall assure that licensed/certificated personnel qualified in a child's identified area(s) of need will have diagnostic and ongoing instructional responsibilities and contact with the child and the child's other service providers and parents.

### **3.04 Personnel Qualifications**

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

3.04(1) Personnel qualifications.

3.04(1)(a) Teachers

3.04(1)(a)(i) Special education.  
All special education teachers shall hold Colorado teacher's certificates or licenses with appropriate endorsements in special education.

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

- 3.04(1)(a)(ii) Home-hospital.
- Home-hospital teachers for children with disabilities shall hold Colorado teacher's certificates or licenses.
- 3.04(1)(a)(iii) Specialty.
- Specialty teachers in music, art, adapted physical education, home economics, industrial arts and vocational education shall possess Colorado teacher's certificates or licenses with endorsements in the area of instruction.
- 3.04(1)(b) Related services personnel.
- All related services personnel providing services to children with disabilities shall hold Colorado special services licenses or certificates with appropriate endorsements. For those areas for which Colorado special services licenses or certificates are not available, appropriate licenses from the state regulatory agency or professional organization registration are required.
- 3.04(1)(c) Special education coordinators.
- Special education coordinators shall have at least a Bachelor's degree and certification and/or licensure in a relevant field. Documentation of their expertise shall be submitted to the Department of Education.
- 3.04(1)(d) Administrators.
- Special education directors and assistant directors must possess a certificate or administrator's license with appropriate endorsement.
- 3.04(1)(e) Paraprofessionals.
- Each administrative unit or eligible facility will determine the qualifications and competencies required for paraprofessionals. Administrative units and eligible facilities shall assure and document that they meet the requirements for supervision of non-certificated personnel as mandated under Section 22-32-110(1)(ee), C.R.S.
- 3.04(1)(f) Educational Interpreters

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

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

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

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

3.04(2) Temporary Teacher Eligibility (TTE).

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

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

3.04(2)(b) The director of special education shall certify that, after reasonable efforts to hire an acceptable, appropriately endorsed individual, none could be found. Documentation of the search which was made to find an acceptable, appropriately endorsed individual shall be maintained by the administrative unit or eligible facility.

3.04(2)(c) No later than 90 days after employment, the administrative unit or eligible facility shall provide to the Department of Education documentation of the individual's application to a program leading to endorsement in the area of request.

3.04(2)(d) At least annually, the administrative unit or eligible facility shall secure evidence of satisfactory progress toward

completion of the endorsement program within the specified time allowed.

- 3.04(2)(e) If extenuating circumstances prevent the individual from meeting the requirements of Sections 3.04(2)(a) through 3.04(2)(d), the circumstances must be documented by the director of special education and submitted to the Department of Education for consideration before any decision to revoke the TTE is made.
- 3.04(2)(f) Application for a second temporary teacher eligibility will not be approved for the same person unless the endorsement program referenced in the request for the first TTE has been completed, or both endorsement programs could be completed within the same period specified in the initial request.
- 3.04(2)(g) Temporary teacher eligibility is issued to the administrative unit or eligibility facility for the individual. Before a TTE will be transferred for an individual by the Department of Education from one unit or eligible facility to another, the second unit or eligible facility shall submit to the Department of Education verification that satisfactory progress was made toward the required endorsement during the last school year the individual was employed on the basis of a TTE.
- 3.04(2)(h) If an individual only needs recent credit and/or successful completion of the basic skills or content area examinations to qualify for the appropriate Colorado educator's license and endorsement, the administrative unit or eligible facility shall apply for both an emergency authorization and a TTE. Verification of enrollment in an appropriate university program is not required, but the Department of Education will only approve a TTE for one school year.

### **3.05 Staff Development**

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

- 3.05(1) Opportunities for staff development shall be provided to foster the continuing development of the awareness, skills and knowledge of each staff member.
  - 3.05(1)(a) Opportunities for staff development shall be furnished to all staff providing direct or indirect services to children with disabilities.

3.05(1)(b) Opportunities for staff development activities shall be designed to bring about changes in knowledge, attitudes, actual performance skills and interpersonal relations of staff members.

3.05(2) Staff development shall include an evaluation component to determine its effectiveness.

**3.06 Program Evaluation**

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

3.06(1) Extent to which quality special education policies and practices are in place and where improvements can occur.

3.06(2) Degree to which children with disabilities are achieving their individual goals as well as school, district, and state standards and student outcomes.

**CHILD IDENTIFICATION AND PLANNING PROCESS****4.01****Child Identification Process**

Each administrative unit shall have a procedure for locating, identifying and evaluating all children ages birth to 21 who may have a disability and be eligible for special education services. These procedures shall be available to all children including children who have not yet entered school, children who discontinue their education, children who are placed in private schools, children who choose home schooling, or children who are highly mobile (such as migrant or homeless children) and may be suspected of having a disability. Child identification shall include child find, special education referral, assessment and determination of disability and eligibility for special education and shall be the responsibility of the administrative unit in which the child attends school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.

## 4.01(1)

## Child Find.

4.01(1)(a) The child find process in each administrative unit shall:

- 4.01(1)(a)(i) Be a process designed to inform the public and to identify children ages birth to 21 who may be eligible to receive special education services. Notice shall be published or announced in newspapers or other media with adequate circulation to notify parents throughout the administrative unit. In the case of infants and toddlers the notice shall inform families that such services are voluntary.
- 4.01(1)(a)(ii) Be designed to utilize available resources within the community.
- 4.01(1)(a)(iii) Involve families and provide information to the families.

4.01(1)(b) Each administrative unit shall have one person designated as the child find coordinator who shall be responsible for an ongoing child identification process.

4.01(1)(c) The child find process shall include specific strategies for children from birth through five years of age, children in school, and children out of school who are discontinuers or dropouts. It shall be available throughout the year and shall include the following components:

- 4.01(1)(c)(i) Planning and development in the areas of public awareness, community referral

systems, community and building based screening, diagnostic evaluations, service coordination and staff development.

4.01(1)(c)(ii) Coordination and implementation in the areas of interagency collaboration, public awareness, referral, screening and resource coordination.

4.0 (1)(c)(iii) Screening procedures for identifying from the total population of children ages birth to 21 years those who may need more in-depth evaluation in order to determine eligibility for special education and related services, or in the case of infants and toddlers early intervention services.

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

4.01(1)(c)(iv) A systematic procedure for considering those children ages 16 to 21 who are out of school and who may have a disability.

4.01(1)(c)(v) Referral procedures to ensure that parents of children are given information about all public and private resources that can meet identified needs. This may include a process for either a building level or early intervention referral. The building level process is to consider all pertinent information, the unique needs of the child and to generate alternative strategies for meeting these needs in non-special education settings or to determine the need for special education referral. These procedures may include dropout prevention strategies and recruitment of special education discontinuers.

4.01(1)(c)(vi) Evaluation of the effectiveness and efficiency of child identification procedures.

4.01(2) Special Education Referral Process.

A special education referral shall be clearly distinguished from a building level referral or a referral for screening both of which are regular education processes. The administrative unit shall establish and follow procedures for referring a child for assessment and to determine whether or not the child has a disability. The referral process shall be accessible to any person, organization or agency having an interest in the education of the child.

4.01(2)(a) A special education referral may be initiated:

4.01(2)(a)(i) As a result of a building level screening and/or referral process; or

4.01(2)(a)(ii) Directly by a parent or other interested person.

4.01(2)(b) A parent of any child referred shall be informed of the referral and be provided with a written notice of all procedural safeguards relevant to children with disabilities, including procedures for resolving disputes.

4.01(2)(c) Once a written special education referral has been initiated, assessment, planning, determination of disability, and, if disabled, IEP development shall be completed within 45 school days from the point of initiation of the special education referral. The special education referral process is initiated when one of the following occurs:

4.01(2)(c)(i) The parent is informed of the special education referral as a result of the building level process or screening and written permission to assess is obtained; or

4.01(2)(c)(ii) The request for special education referral is received from the parent or other interested person as a direct referral and written permission to assess is obtained.

4.01(2)(d) In the case of children birth through two years of age, the evaluation must be completed (and if determined to be an infant/toddler with a disability, an IFSP developed) within 45 calendar days of the referral being received and documented by the designated agency.

4.01(2)(e) A record shall be maintained of the disposition of each special education referral.

4.01(3) Assessment Process.

An assessment process for children ages three to twenty-one shall be provided for the purposes of evaluation for eligibility and for planning. The evaluation process shall include an assessment by a person with expertise in the child's suspected area of disability. In addition, personnel representing various disciplines shall conduct assessments in all areas outlined in Section 4.01(3)(i) of these Rules. In the case of infants and toddlers an assessment shall be conducted in conjunction with the local interagency effort and an appropriate individualized plan developed.

4.01(3)(a) The assessment process shall include a review of all pertinent information provided by the referring party or already available to the administrative unit.

4.01(3)(b) Prior to the assessment process, the parent(s) of any child referred shall be notified in writing of their procedural safeguards and of the types and reasons for any assessments which may be conducted. Prior to the assessment, the parent(s) shall have the opportunity for a face-to-face conference with administrative unit personnel in the primary language of the parent(s).

4.01(3)(c) Parental Consent

4.01(3)(c)(i) Prior to conducting any initial assessment for determination of eligibility for special education services, administrative unit personnel shall give written notice to the parent(s) and obtain written informed consent from the parent(s) to conduct the assessment.

4.01(3)(c)(ii) Prior to any subsequent assessments for eligibility purposes the parent(s) shall be given written notification, and administrative unit personnel shall make reasonable efforts to obtain written informed consent from the parent(s). If the parent(s) fail to respond, the administrative unit shall document efforts made to obtain consent, such as detailed records of phone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and/or detailed records of visits made to the parent and the results of those visits.

- 4.01(3)(c)(iii) If the parent(s) refuses to give consent for any evaluation for eligibility purposes, the administrative unit may continue to pursue those evaluations by using the due process procedures outlined in these Rules, or other dispute resolution methods, such as mediation, if appropriate. The administrative unit cannot proceed with the contested evaluation until and unless the issue is resolved.
- 4.01(3)(d) Assessment procedures shall protect the interests of the child.
- 4.01(3)(d)(i) Administrative unit personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed. For those areas where CDE licensure and endorsement are not available, appropriate professional licensure, registration or credentials is required. Any standardized test shall be administered by trained personnel in accordance with any instructions provided by the producer of the test. If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions shall be included in the evaluation report or IEP.
- 4.01(3)(d)(ii) The instruments used for evaluation of a child shall be selected and administered so as not to be discriminatory on a cultural, ethnic, religious or gender basis.
- 4.01(3)(d)(iii) Children shall be evaluated in their primary language and/or through the use of nonverbal techniques. Children who cannot read, write, speak or understand the English language as determined through appropriate testing may not be determined eligible for special education services on the basis of criteria developed solely upon the command of the English language.

- 4.01(3)(d)(iv) Evaluation instruments shall be valid and reliable. These instruments shall be selected and administered so as to ensure that if an instrument is administered to a child with impaired sensory, manual or speaking skills, the results accurately reflect the child's aptitude or achievement level or other factors the instrument purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills (unless those skills are the factors that the test purports to measure).
- 4.01(3)(e) Each administrative unit shall develop procedures that describe the general nature of the assessment procedures to be followed by its staff, including the selection of instruments.
- 4.01(3)(f) Assessment procedures used for the determination of eligibility shall have been completed no more than 12 months prior to the meeting at which eligibility is determined.
- 4.01(3)(g) Appropriately certificated, endorsed, registered or licensed personnel shall complete assessment procedures appropriate to the suspected area of disability in sufficient scope and intensity to determine whether the child meets the criteria for eligibility and to identify the nature of the child's special education needs. Assessments shall include information related to enabling the child to be involved in, and progress in the general curriculum or, for preschool children, to participate in appropriate activities. When the assessment/planning team determines, on an individual basis, that a specific formal assessment procedure is not appropriate an informal assessment may replace a formal assessment procedure.
- 4.01(3)(h) The assessment shall include both formal and informal measures and shall include a review of appropriate existing data. It shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category identified or suspected.
- 4.01(3)(h)(i) Formal measures are individually administered standardized test instruments and/or normative data. Formal evaluations conducted by the administrative unit shall be administered by individuals appropriately

licensed/certificated and endorsed in the areas being assessed. For those disciplines in which licensure/certification and/or endorsement is not available, other appropriate licensure or registration is required. In order to be considered by the planning team, formal independent or private evaluations shall be conducted by appropriately licensed/certificated and endorsed, or other appropriately registered or licensed personnel. Upon written request from the administrative unit, the parents of the child shall have the responsibility to secure information regarding the credentials of the individual(s) completing the independent or private evaluation. This request shall provide the state's criteria for licensure/certification and endorsement, or other licensure or registration.

4.01(3)(h)(ii) Informal measures include but are not limited to observation, anecdotal records, behavior sampling, review of records, interviews, and checklists.

4.01(3)(i) An assessment shall be completed and documented in the following areas prior to the meeting at which a disability is determined. Persons may contribute assessment information in more than one of the following areas:

4.01(3)(i)(i) Cognitive (intellectual and perceptual functioning).

Assessment of cognitive functioning shall include the psychological processes involved in intelligence and perception.

4.01(3)(i)(ii) Social/emotional functioning (including adaptive behavior).

Assessment of social/emotional functioning shall include a sampling of behaviors in the home, school and community using one or more of the following: standardized measures, observation, behavior counts, interview(s), performance samples, checklists, projective techniques and record reviews.

4.01(3)(i)(iii) Physical functioning.

Assessment of physical functioning shall include a health history, current health status, observations of the child and screening of vision and hearing acuity. Assessment of motor functioning may also be included. If vision or hearing screening is failed, formal assessment of vision or hearing shall be completed. A variety of procedures and processes may be used to obtain a health history and current health status.

4.01(3)(i)(iv) Communicative (speech and language) functioning.

Assessment of communicative functioning shall include one or more of the following: language samples, observations, checklists, interview(s), performance sampling, record review and/or standardized tests and may occur in a variety of environments.

4.01(3)(i)(v) Educational achievement.

Assessment of educational performance shall include standard measures or other appropriate means devised by the examiner. For some children developmental and/or functional assessment may substitute for educational assessments.

4.01(3)(i)(vi) Life skills/career/transitional performance.

Assessment of functional life skills and vocational skills shall include one or more of the following: standardized measures, observation, behavior counts, interview(s), performance samples, interest inventories, skill analysis, checklists and record reviews and may occur in a variety of environments including home, school and community.

Information for younger children may be more appropriately obtained by developmental and/or environmental assessment techniques and/or through

utilization of nationally or professionally recognized instruments.

4.01(3)(j) Re-evaluations.

4.01(3)(j)(i) Comprehensive evaluations must be completed in accordance with these Rules:

4.01(3)(j)(i)(A) every three years;

4.01(3)(j)(i)(B) prior to change of disability and eligibility, including termination from special education due to ineligibility; or

4.01(3)(j)(i)(C) in appropriate areas prior to a significant change in placement; and may be conducted more frequently if conditions unique to the child warrant or if requested by the child's parent or teacher.

4.01(3)(j)(ii) Prior to the re-evaluation, the parent(s) shall be notified of the re-evaluation in writing and shall be provided with a copy of a document explaining the procedural safeguards set forth in Section 6.00 of these Rules. Administrative unit personnel must demonstrate that they have taken reasonable measures to obtain written informed consent from the parent(s) in accordance with Section 4.01(3)(c) of these Rules. Consent is not required to review existing data or prior to administering a test or other assessment that is given to all children at that grade level unless parental consent is required for all children.

4.01(3)(j)(iii) Responsibility for initial assessment and re-evaluation shall be with the administrative unit in which the child attends school, or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. The administrative unit of

attendance shall invite the special education director or designee of the administrative unit of residence to participate in the process of the initial assessment or re-evaluation. State operated programs and eligible facilities shall be excepted from this Rule as follows:

4.01(3)(j)(iii)(A) Initial assessment and re-evaluation for children residing at the Colorado School for the Deaf and the Blind and the Mental Health Institutes, and the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.

4.01(3)(j)(iii)(B) Initial assessment and re-evaluation for incarcerated children shall be the responsibility of the Department of Corrections.

4.01(3)(j)(iii)(C) Re-evaluation for children at eligible facilities shall be the responsibility of the administrative unit of residence.

4.01(3)(j)(iv) The IEP team and other qualified professionals as appropriate shall review existing assessment data on the child and identify what additional data, if any, are needed to determine disability, present level of performance, needs, and/or additions or modifications to the IEP which are needed to enable the child to meet the goals in the IEP and participate, as appropriate, in the general curriculum. If this group determines that no additional data are needed, the administrative unit:

4.01(3)(j)(iv)(A) shall notify the child's parent(s) of that determination and the reasons for it, and the right of such parent(s) to request an assessment to determine whether the child continues to be a child with a disability; and

4.01(3)(j)(iv)(B) shall not be required to conduct such an assessment unless requested to do so by the child's parent(s) or teacher.

4.01(4) Determination of Disability and Eligibility.

Once a special education referral has been made and assessment completed, a meeting shall be held to determine if the child has a disability and if the child is eligible for special education. If the child is determined to have a disability and is eligible, an IEP shall be developed. These functions may occur at the same meeting or at different meetings.

4.01(4)(a) Timeline.

4.01(4)(a)(i) A meeting to discuss the evaluation of the child and to determine if the child has a disability and is eligible for special education shall be held within a time frame to allow the IEP to be developed within 45 school days of the date of the special education referral.

4.01(4)(a)(ii) A meeting shall be held to discuss the re-evaluation of the child as required in 4.01(3)(j) of these Rules, to determine if the child continues to have a disability, and to determine if the child continues to be eligible for special education.

4.01(4)(b) Responsibility.

Meetings during which a disability or eligibility is initially considered shall be the responsibility of the administrative unit in which the child attends school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.

- 4.01(4)(b)(i) If the administrative unit in which the parent resides would be different from the unit of attendance, the administrative unit of attendance shall notify the administrative unit in which the child's parent resides prior to the assessment process so that the administrative unit of residence can choose to participate in the process.
- 4.01(4)(b)(ii) If the administrative unit in which the parent resides disagrees with the determination of disability, the unit may elect to initiate an informal process such as negotiation or mediation or it may request the Commissioner of Education to review the process of determination.
- 4.01(4)(b)(iii) Except for state operated programs and eligible facilities, review meetings in which the determination of disability and eligibility is reconsidered shall be the responsibility of the administrative unit of attendance. This includes review meetings for children with disabilities attending on-line programs within the administrative unit of attendance. For state operated programs, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the state operated programs. For eligible facilities, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the administrative unit of residence.
- 4.01(4)(b)(iv) When the charter contract between a charter school and its chartering district allows the charter school to provide the special education services, and to conduct the meetings required by these Rules, the charter school shall be responsible for meetings concerning the determination of disability and eligibility.
- 4.01(4)(c) Participants.

Meetings to determine if the child has a disability and is eligible for special education, whether held separately or in connection with a meeting to develop an IEP, must include:

4.01(4)(c)(i) A multidisciplinary team knowledgeable about the child and about the meaning of the evaluation data.

4.01(4)(c)(ii) At least one teacher or other specialist with knowledge in the area of suspected disability.

4.01(4)(c)(iii) Parents must also be given the opportunity to consult with the team or a representative thereof prior to determination that their child has a disability.

4.01(4)(c)(iv) At the discretion of the special education director for the administrative unit of residence, the special education director or designee for that administrative unit of residence.

4.01(4)(d) Change of disability and/or eligibility.

A change of disability and/or eligibility may only be made after reassessment and at a meeting in which the results of reassessment are considered.

4.01(4)(d)(i) Parents must be provided with written notice of the meeting and the proposed change of disability and/or eligibility and informed of their procedural safeguards.

4.01(4)(d)(ii) Should a child no longer meet eligibility criteria and no longer be eligible for special education and related services, such services shall be terminated by the team.

4.01(4)(e) Record of meeting.

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

**4.02 Individualized Education Planning Resulting in an Individualized Education Program (IEP)**

The IEP is a written statement that is developed, reviewed and/or revised as a result of an individualized planning process in accordance with these Rules.

**4.02(1) Timelines for Meetings.**

4.02(1)(a) If a child is determined to have a disability, an IEP shall be developed within 45 school days of the date of the special education referral.

4.02(1)(b) If separate meetings are held for the determination of disability and the development of an IEP, the meeting to develop the IEP must be held within 30 calendar days of the determination that the child has a disability and is in need of special education services. This must, however fall within the 45 school day timeline.

4.02(1)(c) Meetings to review and revise each child's IEP and determine the child's placement shall be initiated and conducted periodically, at least once a year. An IEP shall be in effect at the beginning of each school year for each child with a disability.

4.02(1)(d) Additional meetings may be held any time throughout the school year at a mutually convenient time at the request of the parent(s), the child and/or the administrative unit or eligible facility, and the IEP may be revised so long as the planning is done in accordance with these Rules.

**4.02(2) Responsibility for Meetings.**

4.02(2)(a) If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the administrative unit of residence to participate as an IEP team member. This includes on-line programs operated within the administrative unit of attendance. Exceptions to this Rule are as follows:

4.02(2)(a)(i) All meetings for children residing at the Colorado School for the Deaf and the Blind and the Mental Health Institutes, and the Division of Youth Corrections shall be

the responsibility of those agencies which shall invite the administrative unit of residence to participate.

- 4.02(2)(a)(ii) All meetings for incarcerated children at the Department of Corrections shall be the responsibility of that agency.
- 4.02(2)(a)(iii) Meetings to develop the initial individualized educational program (IEP) for children at eligible facilities shall be the responsibility of the administrative unit of attendance (the administrative unit in which the facility is located). Thereafter IEP review meetings and re-determination of eligibility shall be the responsibility of the administrative unit of residence.
- 4.02(2)(a)(iv) When the charter contract between a charter school and its chartering district allows the charter school to provide the special education services and to conduct the meetings required by these Rules, the charter school shall be responsible for meetings to initially develop and subsequently review the IEP.

4.02(3) Participants in meetings.

- 4.02(3)(a) Meetings held for the development of an initial IEP or for the review of an IEP based on reevaluation and determination of disability and eligibility, shall include the following participants:
  - 4.02(3)(a)(i) The child unless the child's age or preference of the parent(s) indicates otherwise.
  - 4.02(3)(a)(ii) The child's parent(s), as identified in Section 2.07(1) of these Rules, unless they decide not to attend.
  - 4.02(3)(a)(iii) A regular education teacher who is knowledgeable about the general curriculum.
  - 4.02(3)(a)(iv) Director of special education or designee who is knowledgeable about the availability of resources of the administrative unit and has the authority to commit those resources.

- 4.02(3)(a)(v) Persons with authority to make building level decisions regarding service delivery.
- 4.02(3)(a)(vi) Administrative unit or eligible facility personnel who collectively have the following qualifications:
  - 4.02(3)(a)(vi)(A) A staff member qualified to provide or supervise instructional and/or related services in the area of the child's suspected disability.
  - 4.02(3)(a)(vi)(B) Persons who have information relevant to the functioning, achievement and performance of the child.
  - 4.02(3)(a)(vi)(C) Persons knowledgeable about the results and meaning of the assessment information when new assessment is to be considered.
  - 4.02(3)(a)(vi)(D) Persons knowledgeable about service delivery options including out of district options where appropriate.
- 4.02(3)(a)(vii) At the discretion of the parent or unit/facility, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
- 4.02(3)(a)(viii) Representatives of other agencies, facilities, private schools or administrative units when determined appropriate by the administrative unit of residence. This includes a representative of a public agency that is likely to be responsible for providing or paying for transition services.
- 4.02(3)(a)(ix) At least one special education teacher or service provider of the child.

- 4.02(3)(a)(x) If the meeting is not the responsibility of the administrative unit of residence, the special education director or designee for that administrative unit of residence may, at his/her discretion, participate in the meeting.
- 4.02(3)(b) Should a meeting be held only for the review of the IEP, the meeting shall include the following participants:
- 4.02(3)(b)(i) The director of special education or designee who is knowledgeable about the availability of resources of the administrative unit and has the authority to commit those resources.
- 4.02(3)(b)(ii) The child unless the child's age or preference of the parent(s) indicates otherwise.
- 4.02(3)(b)(iii) The child's parent(s), as identified in Section 2.07(1) of these Rules, unless they decide not to attend.
- 4.02(3)(b)(iv) The child's regular education teacher. If the child's regular education teacher is not knowledgeable about the general curriculum, then a regular education teacher who is knowledgeable about the general curriculum must also attend.
- 4.02(3)(b)(v) The child's licensed special educators.
- 4.02(3)(b)(vi) Other persons at the discretion of the parent or unit/facility.
- 4.02(3)(b)(vii) Representatives of the facility or private school which the child attends, if applicable. If the representative is unable to attend, their participation is ensured through other methods, including individual or conference telephone calls.
- 4.02(3)(b)(viii) If the meeting is not the responsibility of the administrative unit of residence, the special education director or designee for the administrative unit of residence may, at his/her discretion, participate in the meeting.

4.02(4) Content of IEP/Record of Meeting.

Except for state operated programs and eligible facilities, the IEP team of the child's administrative unit of attendance shall develop a written IEP for the child. In the context of parental school choice, the proposed administrative unit of attendance is responsible for convening the IEP team when needed if there is a question whether the school of choice is an appropriate placement for the child. Each state operated program is responsible for developing the written IEPs for children with disabilities in its program. The IEP team of the administrative unit of attendance shall develop the initial IEPs for children placed in eligible facilities. Subsequent IEP reviews for children placed in eligible facilities shall be developed by the administrative unit of residence. The written IEP for each child shall include the following:

4.02(4)(a) Statements of the child's present level of functioning, achievement and performance based on information from the meeting to determine disability and eligibility, if held separately.

4.02(4)(b) Statements of the child's educational needs, including the strengths of the child and the concerns of the parent(s) for enhancing the education of their child.

4.02(4)(b)(i) In the case of a child with limited English proficiency, the IEP team shall consider the language needs of the child as such needs relate to the child's IEP.

4.02(4)(b)(ii) Beginning at age 14 and updated annually, the IEP shall contain a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or vocational education program).

4.02(4)(c) Statement of the child's disability and the criteria utilized to determine inability to receive reasonable educational benefit from regular education as identified in Section 2.02 of these Rules.

Note: If the determination of disability and eligibility occurred at a separate meeting from the IEP meeting, that information is recorded as part of the IEP.

4.02(4)(d) Statement of how the child's disability affects the child's progress in the general curriculum; or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

- 4.02(4)(e) Statements of measurable annual goals and short-term instructional objectives which:
- 4.02(4)(e)(i) are related to meeting the child's needs that result from the child's disability;
  - 4.02(4)(e)(ii) are designed to enable the child to be involved in and progress in the general curriculum;
  - 4.02(4)(e)(iii) measure progress toward the goals with objective criteria and evaluation procedures and schedules; and
- 4.02(4)(f) A statement of:
- 4.02(4)(f)(i) how the child's progress toward the annual goals will be measured; and
  - 4.02(4)(f)(ii) how the child's parent(s) will be regularly informed (at least as often as parents are informed of their nondisabled children's progress) of:
    - their child's progress toward the annual goals, and
    - the extent to which that progress is sufficient to enable the child to achieve the goals.
- 4.02(4)(g) Statements of:
- 4.02(4)(g)(i) specific special education and related services:
    - including transition services beginning at age 16, or younger when appropriate; and
    - including a statement of the interagency responsibilities or any needed linkages, if appropriate; and
  - 4.02(4)(g)(ii) supplementary aids and services to be provided to the child, or on behalf of the child.
- Such statements shall include the specified amount of services to be

provided so that the commitment of resources and the manner in which services will be delivered will be clear to all who are involved in both the development and implementation of the IEP. If transition services that have been agreed to by another agency are subsequently not provided, the administrative unit must reconvene the IEP team to identify alternative strategies to meet the student's transition needs.

- 4.02(4)(h) Projected dates for initiation of services and the anticipated duration of services, including consideration of the need for services beyond the regular school year.
- 4.02(4)(i) Recommendations as to where the services will be provided and the extent to which the child will participate in regular education programs.
- 4.02(4)(j) Determination and description of any special transportation needs for the child.
- 4.02(4)(k) The written IEP for each child with a hearing disability shall also include a Communication Plan as developed by the IEP team. The Plan shall include the following:
- 4.02(4)(k)(i) A statement identifying the child's primary communication mode as one or more of the following: Aural, Oral, Speech-based, English Based Manual or Sign System, American Sign Language. Further, there should be no denial of opportunity for instruction in a particular communication mode based on:
- residual hearing,
  - the parents' inability to communicate in the child's communication mode or language, nor
  - the child's experience with another mode of communication or language.
- 4.02(4)(k)(ii) A statement documenting that an explanation was given of all educational options provided by the school district and available to the child.

- 4.02(4)(k)(iii) A statement documenting that the IEP team, in addressing the child's needs, considered the availability of deaf/hard of hearing adult role models and a deaf/hard of hearing peer group of the child's communication mode or language.
  - 4.02(4)(k)(iv) The teachers, interpreters, and other specialists delivering the communication plan to the student must have demonstrated proficiency in, and be able to accommodate for, the child's primary communication mode or language.
  - 4.02(4)(k)(v) The communication-accessible academic instruction, school services, and extracurricular activities the student will receive must be identified.
- 4.02(4)(l) The written IEP for each child with a vision disability shall also include a Literacy Modality Plan as developed by the IEP team based on comprehensive assessment of the student's literacy modalities by a licensed teacher endorsed in the area of visual impairment. Braille shall be the literacy modality selected unless the IEP team determines, based on the comprehensive literacy modality assessment that instruction in Braille is not appropriate. The plan shall include the following:
- 4.02(4)(l)(i) a statement of how the selected literacy mode or modes will be implemented as the student's primary or secondary mode for achieving literacy and why such mode or modes have been selected,
  - 4.02(4)(l)(ii) a statement of how the student's instruction in the selected literacy mode or modes will be integrated into educational activities.
  - 4.02(4)(l)(iii) the date on which the student's instruction in the selected mode or modes shall commence, the amount of instructional time to be dedicated to each literacy mode, and the service provider responsible for each area of instruction, and
  - 4.02(4)(l)(iv) a statement of the level of competency in each selected literacy mode or modes

which the student should achieve by the end of the period covered by the IEP.

- 4.02(4)(l)(v) When Braille is a selected literacy mode, the teacher delivering Braille instruction to the student must have demonstrated competency in reading and writing Braille.
- 4.02(4)(m) In the case of a child whose behavior impedes his or her learning or that of others, document that the team considered, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior.
- 4.02(4)(n) Document whether the child requires assistive technology devices and services.
- 4.02(4)(o) A statement specifying whether the student shall achieve the content standards adopted by the district in which the student is enrolled or whether the student shall achieve individualized standards which would indicate the student has met the requirements of the individual educational program.
- 4.02(4)(p) Description of modifications, if necessary, that will be provided, for a child with a disability:
  - 4.02(4)(p)(i) to advance appropriately toward attaining the annual goals;
  - 4.02(4)(p)(ii) to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - 4.02(4)(p)(iii) to be educated and participate with other children with disabilities and nondisabled children, provided that the child does not impede the learning, welfare or safety of others.
- 4.02(4)(q) A statement:
  - 4.02(4)(q)(i) of any individual modifications in the administration of state or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and
  - 4.02(4)(q)(ii) of why that assessment is not appropriate for the child and how the child will be

assessed, if the IEP team determines that the child will not participate in a particular state or districtwide assessment of student achievement (or part of such an assessment).

4.02(4)(r) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class; rationale for providing services outside of the regular classroom if accomplishment of IEP goals and objectives cannot be achieved satisfactorily there; and documentation of options considered.

4.02(5) Notice of meetings.

4.02(5)(a) Written notification of the meeting shall be provided to the parent(s).

4.02(5)(a)(i) Parent(s) shall be notified of the meeting in a timely manner to insure that they will have the opportunity to attend.

4.02(5)(a)(ii) Written notification shall indicate the purpose, time, location of the meeting and who will be in attendance.

4.02(5)(a)(iii) Written notification shall indicate that parent(s) have the right to reschedule the meeting at a mutually agreed upon time and place if such can be found.

4.02(5)(a)(iv) If neither parent can attend, the unit shall use other methods to insure parent participation including individual or conference telephone calls, and maintain a record of its attempts to arrange a meeting at a mutually agreed upon time and place.

4.02(5)(b) For meetings regarding the transition planning process from infant/toddler to special education preschool services:

4.02(5)(b)(i) with the approval of the family, a meeting shall be held with the public agency responsible for ensuring the provision of infant/toddler services, the family and the administrative unit of residence, at least 90 days or at the discretion of those involved, six months prior to the child's third birthday. The meeting shall result in a written transition plan and be designed

to provide a smooth and effective transition to preschool services;

4.02(5)(b)(ii) by the child's third birthday an Individualized Education Plan (IEP) or Individual Family Service Plan (IFSP) must have been developed and implemented (if the child's third birthday occurs during the summer, the IEP team determines the date services will begin); and

4.02(5)(b)(iii) the administrative unit must participate in the planning process which includes the development of the IEP or IFSP.

4.02(5)(b)(iv) An IFSP may serve as the IEP for a child with a disability age 3-5 (or at the discretion of the administrative unit, for a two year old child who will turn three during the school year) under the following conditions:

4.02(5)(b)(iv)(A) the parent is given a detailed explanation of the differences between an IEP and an IFSP;

4.02(5)(b)(iv)(B) both the parent and the administrative unit agree to use an IFSP;

4.02(5)(b)(iv)(C) written informed consent is obtained from the parent; and

4.02(5)(b)(iv)(D) the IFSP is developed in accordance with sections 4.01 and 4.02 of these Rules and contains the content required in an IFSP.

4.02(5)(c) Meetings regarding the consideration of transition needs and services to prepare for transition from school to post school activities, the administrative unit shall:

4.02(5)(c)(i) invite the student to his/her own meeting and document the invitation in the student's record;

- 4.02(5)(c)(ii) take other steps to ensure that the student's preferences and interests are considered if the student does not attend;
  - 4.02(5)(c)(iii) invite a representative of any other agency that is likely to be responsible for providing or paying for transition services; and
  - 4.02(5)(c)(iv) take other steps to obtain the participation of the agency in the planning of any transition services, if the agency invited to send a representative to a meeting does not do so.
- 4.02(5)(d) If the administrative unit of attendance is responsible for the meeting, when the parent(s) is notified of the initial IEP development meeting and each subsequent IEP review meeting, the special education director or designee for the administrative unit of residence shall also be notified of the meeting in the same manner that the parent is notified.
- 4.02(5)(e) Each meeting notice to the parents shall be accompanied by a copy of a document explaining the procedural safeguards set forth in Section 6.00 of these Rules.
- 4.02(6) When developing, reviewing or revising an IEP, required participants in the planning meeting shall:
- 4.02(6)(a) Draw upon and consider information from a variety of sources including: aptitude and achievement tests, parent input, teacher recommendations and reports on physical condition, social or cultural background and adaptive behavior.
  - 4.02(6)(b) Insure that information obtained from all of these sources is documented and carefully considered.
  - 4.02(6)(c) Reach decisions through group discussion and consensus. Should consensus not be reached, the majority and minority opinions of the participants shall be recorded as part of the IEP and made available to the director of special education.
- 4.02(7) Each administrative unit, state operated program, and eligible facility shall assure the provision of special education instructional and related services in accordance with the IEP, and shall make a good faith effort to assist the child to achieve the goals and objectives listed in the IEP. Prior to the initial provision of special education and related services, parent(s) shall receive written notification and provide written permission for such services. Services shall then commence immediately or at least within 3

days of the IEP meeting or in accordance with other arrangements agreed to by the parent. The administrative unit/facility shall ensure that all teachers/service providers are informed of their responsibilities related to implementing the child's IEP and that they have access to the IEP.

4.02(8) Prior to a significant change in placement for educational purposes, a re-evaluation in accordance with Section 4.01(3)(j) of these Rules shall be conducted.

4.02(8)(a) Parental consent requirements outlined in sections 4.01(3)(c)(ii) and (iii) of these Rules shall apply.

4.02(8)(b) Once the re-evaluations are completed, an IEP meeting shall be held to determine if the change in placement is appropriate.

#### **4.03 Procedures for Transfer Students**

The transfer procedures in this section shall apply if a child moves into an administrative unit from another administrative unit in Colorado, or from another state and is known to have been receiving special education services. This section shall also apply when a child enrolls in a public school of choice which is located outside of the child's administrative unit of residence, including a charter school or an on-line program. However, for a child transferring into an on-line program from a brick and mortar school, or vice versa, Section 4.03(1)(c) of these Rules is the only option available because such transfer constitutes a significant change in placement, and the procedures set forth in Section 5.04(2) of these Rules must be followed. The director of special education or designee, shall pursue one of the following options:

4.03(1) For students transferring within the state:

4.03(1)(a) Provide services immediately in accordance with the child's IEP. All requirements for reviews shall be followed and a copy of the IEP shall be on file.

4.03(1)(b) Provide the child with interim special education and related services agreed to by the parent(s) and the director of special education or designee, while waiting for the record of the IEP. Should the record of the IEP not be received within a reasonable amount of time, the administrative unit must refer the child for complete assessment and planning in accordance with these Rules. The referral and assessment process must be initiated so as to allow the completion of the IEP within 30 school days from the date enrollment was requested.

- 4.03(1)(c) Refer the child for a complete assessment and planning in accordance with these Rules in the meantime providing services as indicated on the last agreed upon IEP or providing special education and related services as agreed to by the parents and the director of special education and documented in the student's record. Such assessment and planning shall be completed within 30 school days. If the school or on-line program bills the district of residence for tuition costs, billing may occur for services provided during the 30 school days. If the transfer is to an on-line program from a brick and mortar school, or vice versa, the assessment required by this section may be a re-evaluation as set forth in Section 4.01(3)(j) of these Rules.
- 4.03(1)(d) Services to a child moving into an administrative unit and known to have been receiving special education services, utilizing one of the above three options, shall commence according to the following:
- 4.03(1)(d)(i) immediately, if the services/program are available,
  - 4.03(1)(d)(ii) within 3 school days of requested enrollment if the services/program need to be developed, or
  - 4.03(1)(d)(iii) other options agreed to in writing by the parent(s).
- 4.03(1)(e) When a child transfers to a public school of choice which is located outside the child's administrative unit of residence, including a charter school or an on-line program, a written notice of the child's enrollment shall be provided to the district of residence and the administrative unit of residence in accordance with Section 4.06 of these Rules.
- 4.03(2) For students transferring from another state:
- 4.03(2)(a) The administrative unit must ascertain whether it will adopt the most recent evaluation and IEP developed in the previous state;
  - 4.03(2)(b) If the administrative unit elects to adopt the most recent evaluation and IEP from another state and determines that the IEP meets Colorado's education standards that IEP can be implemented;
  - 4.03(2)(c) If the administrative unit elects not to adopt the out of state evaluations and IEP it must seek consent to conduct an initial evaluation;

- 4.03(2)(d) While the evaluation is in process the administrative unit shall provide the student with interim special education and related services agreed to by the parent, unless the parent and administrative unit are unable to agree upon interim services, in which case the student shall be placed in the regular school program;
- 4.03(2)(e) If the parent disagrees with the new evaluation or the proposed IEP a due process hearing can be requested. During the pendency of the hearing, the student could be placed in the program proposed by the administrative unit, with the parents' agreement, or another placement on which the parent and administrative unit agree. However, if the parent does not agree to place the student in the program proposed by the administrative unit and no other interim placement can be agreed upon the administrative unit shall place the student in the regular educational program.
- 4.03(2)(f) If the child is transferring from an out-of-state brick and mortar school to a public on-line program, the procedures set forth in 4.03(1)(c) shall apply because the transfer constitutes a significant change in placement.

#### **4.04 Diagnostic Services**

If an administrative unit places a child for diagnostic purposes as part of an initial evaluation, the following requirements shall be met:

- 4.04(1) The administrative unit shall obtain written permission for assessment as well as written permission for temporary special education and related services for diagnostic purposes from the child's parent(s) or guardian(s), and documentation of this permission shall be maintained in the child's file.
- 4.04(2) An initial eligibility meeting shall be held within 30 school days of the diagnostic placement.
- 4.04(3) The child shall not be reported as having a disability for state and federal funds during the period of provision of services for diagnostic purposes.

#### **4.05 Manner of Meetings**

The meetings required by these Rules may be conducted face-to-face, via telephone conferencing, electronically, or a combination thereof as long as the confidentiality of the child is maintained and meeting participants are provided with documentation necessary to allow them to meaningfully participate in the meeting.

#### **4.06 Procedures for notification of out-of-district enrollment under public schools of choice, charter schools, and on-line programs**

4.06(1) Public schools of choice that are not charter schools or on-line programs

4.06(1)(a) Notice

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

4.06(1)(a)(i) Applies to enroll

“Applies to enroll” means that the district of attendance has offered a space to the child and the parent(s) has accepted the offer.

4.06(1)(a)(ii) Content of notice

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

4.06(1)(a)(iii) Manner

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

4.06(1)(a)(iv) Timing

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

4.06(1)(a)(iv)(A) The child has applied to enroll, as that term is defined in this section, or is enrolled in the district of attendance; and

4.06(1)(a)(iv)(B) Upon exercising timely and due diligence, the school principal knows that the child is a child with a disability.

4.06(1)(a)(v) Change in district of residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Subsection 4.06(1) must be followed. In addition, the district of attendance must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director of the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

4.06(2) Charter Schools

4.06(2)(a) Notice

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

4.06(2)(a)(i) Applies to enroll

"Applies to enroll" shall mean that the charter school has offered a space to the

child and the parent(s) has accepted the offer.

4.06(2)(a)(ii) Content of notice

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

4.06(2)(a)(iii) Manner

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

4.06(2)(a)(iv) Timing

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

4.06(2)(a)(iv)(A) The child has applied to enroll, as defined in this section, or is enrolled in the charter school; and

4.06(2)(a)(iv)(B) Upon exercising timely and due diligence, the charter school administrator knows that the child is a child with a disability.

4.06(2)(a)(v) Change in district of residence

If there is a change in the child's district of residence, the same notification and

timelines set forth in this Subsection 4.06(2) must be followed. In addition, the charter school must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

4.06(3) Public On-line Programs under Section 22-33-104.6, C.R.S.

4.06(3)(a) Notice

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

4.06(3)(a)(i) Applies to enroll

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

4.06(3)(a)(ii) Content of notice

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

4.06(3)(a)(iii) Manner

The notice shall be signed by the director of the on-line program and shall be sent to the superintendent of the district of residence, if the district of residence is not the administrative unit of residence, and to

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

4.06(3)(a)(iv) Timing

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

4.06(3)(a)(iv)(A) The child has applied to enroll or is enrolled in the on-line program, as defined in this Section; and

4.06(3)(a)(iv)(B) Upon exercising timely and due diligence, the on-line program director knows that the child is a child with a disability.

4.06(3)(a)(v) Change in district of residence

If there is a change in the child's district of residence the same notification and timelines set forth in this Subsection 4.06(3) must be followed. In addition, the on-line program must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

**4.07 Contract for Tuition Responsibility**

4.07(1) Charter School

4.07(1)(a) Contract Elements

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

- 4.07(1)(a)(i) the name of the district of residence;
- 4.07(1)(a)(ii) the name of the administrative unit of residence, if different from the district of residence;
- 4.07(1)(a)(iii) the name of the charter school;
- 4.07(1)(a)(iv) the name of the chartering school district;
- 4.07(1)(a)(v) the name of the administrative unit of attendance, if different from the chartering district;
- 4.07(1)(a)(vi) the name of the child;
- 4.07(1)(a)(vii) the child's date of birth;
- 4.07(1)(a)(viii) the child's address;
- 4.07(1)(a)(ix) the child's primary disability;
- 4.07(1)(a)(x) whether the child will be attending full-time or part-time;
- 4.07(1)(a)(xi) the charter school's tuition cost rate as approved by the state board, or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the state board approved rate will be charged;
- 4.07(1)(a)(xii) the number of school days (student contact days) covered by the contract;

- 4.07(1)(a)(xiii) the schedule for billing and payment, which should be on a monthly basis;
- 4.07(1)(a)(xiv) a statement that the charter school will notify the directors of special education for the administrative units of residence and attendance, as well as the superintendent of the district of residence, if the district is not an administrative unit, within 15 calendar days of the date of the child's withdrawal from the charter school or when the child is otherwise no longer attending the charter school. If the charter school is an on-line program, this section shall not apply. Instead, Section 4.07(2)(a)(xiii) shall apply.
- 4.07(1)(a)(xv) a statement that the charter school will not bill the district of residence for more than 5 consecutive days of unexcused absences or for more than 10 cumulative days of unexcused absences during the school year;
- 4.07(1)(a)(xvi) a statement that the charter school or the administrative unit of attendance, whichever is responsible according to the charter contract, will timely notify the director of special education for the administrative unit residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);
- 4.07(1)(a)(xvii) a statement that the tuition cost responsibility commences on the date that services under an existing IEP commence, unless the child's IEP team determines that the charter school is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14) of these Rules; and

4.07(1)(a)(xviii) signature lines for the individuals who are legally authorized to sign the contract on behalf of the charter school, the administrative unit of residence, and the district of residence if it is not an administrative unit.

4.07(1)(b) Additional contract elements for children enrolled in charter school on-line programs

If the charter school sponsors an on-line program, the costs of direct speech language instruction and related services will not be included in the charter school's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech/language instruction and/or related services, the contract between the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, must contain the following additional elements:

4.07(1)(b)(i) A statement that the child's IEP specifies speech/language instruction and/or related services and a description of the nature and duration of such services;

4.07(1)(b)(ii) A statement identifying which entity (i.e., the charter school, the chartering school district, the administrative unit of attendance, if different from the chartering school district, the administrative unit of residence or a third party) will deliver such services;

4.07(1)(b)(iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of residence is failing or has failed to provide appropriate services as specified by the child's IEP;

4.07(1)(b)(iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of

attendance is failing or has failed to provide appropriate services as specified by the child's IEP.

4.07(1)(b)(v) A statement describing whether the costs of providing the speech-language instruction and/or related services will be an add-on to the tuition cost rate approved by the State Board that will be billed and an identification of what those costs will be.

4.07(1)(b)(vi) If the speech-language instruction and/or a related service are to be provided by the charter school or a third party contractor with the charter school that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the service in the amount of time specified on the child's IEP. If such services are to be provided by the charter school or a third party contractor of the charter school, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the charter school or its third party contractor is failing or has failed to provide appropriate services as specified by the child's IEP.

4.07(1)(b)(vii) If speech-language instruction and/or related services associated with child find are being claimed, then such services must be included in the charter school's tuition cost rate.

4.07(1)(c) Change in district of residence

If there is a change in the child's district of residence the charter school must notify the new district of residence in accordance with Section 4.06(2) of these Rules. The charter school must also enter into a tuition contract with the new district of residence in accordance with Section 4.07(1) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

4.07(1)(d) If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the charter

school, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

4.07(1)(e) Contract timelines

4.07(1)(e)(i) The charter school shall send the proposed tuition contract to the special education director of the administrative unit of residence, and to the district of residence, if it is not an administrative unit, within 15 calendar days following the date it is determined that the charter school is an appropriate placement for the child.

4.07(1)(e)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(5), C.R.S., even though a contract has not been executed.

4.07(2) On-line Programs (excluding charter school on-line programs)

4.07(2)(a) Contract elements

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

- 4.07(2)(a)(i) the name of the district of residence;
- 4.07(2)(a)(ii) the name of the administrative unit of residence, if different from the district of residence;
- 4.07(2)(a)(iii) the name of the on-line program;
- 4.07(2)(a)(iv) the name of the sponsoring district(s) and/or the board of cooperative services;
- 4.07(2)(a)(v) the name of the child;
- 4.07(2)(a)(vi) the child's date of birth;
- 4.07(2)(a)(vii) the child's address;
- 4.07(2)(a)(viii) the child's primary disability;
- 4.07(2)(a)(ix) whether the child will be attending full-time or part-time;
- 4.07(2)(a)(x) the on-line program's tuition cost rate as approved by the state board or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the State Board approved rate will be charged;
- 4.07(2)(a)(xi) the number of school days (student contact days) covered by the contract;
- 4.07(2)(a)(xii) the schedule for billing and payment, which should be on a monthly basis;
- 4.07(2)(a)(xiii) a statement that when a child with a disability withdraws from the on-line program, or is otherwise not attending the on-line program, the on-line program shall provide notice to the special education directors of the administrative units of residence and attendance, and to the superintendent of the district of residence if the district is not an administrative unit. Notice pursuant to this rule for unexcused nonattendance shall be provided upon the earliest occurrence of the following:

4.07(2)(a)(xiii)(A) the child is absent for 10 consecutive school days from the on-line program's regular education program; or

4.07(2)(a)(xiii)(B) the child is absent for 3 consecutive sessions of scheduled direct special education services, or the parent is absent for 3 consecutive sessions of consultative special education services; or

4.07(2)(a)(xiii)(C) the child is absent for scheduled direct special education services during 10 cumulative school days or the parent is absent for consultative special education services for 10 cumulative school days.

This contract element shall not be interpreted to relieve the on-line program of its obligations regarding truancy pursuant to Section 22-33-107, C.R.S.

4.07(2)(a)(xiv) a statement that the on-line program will not bill the district of residence for unexcused absences in excess of the earliest occurrence of the circumstances defined above in Section 4.07(2)(a)(xiii).

4.07(2)(a)(xv) a statement that the on-line program will timely notify the special education director of the administrative unit of residence-when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for

the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s); and

4.07(2)(a)(xvi) a statement that the tuition cost responsibility commences on the date that services under an existing IEP commences, unless the child's IEP team determines that the on-line program is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14)(a) of these Rules.

4.07(2)(a)(xvii) signature lines for the individuals who have legal authority to sign the contract on behalf of the administrative unit of attendance, the district of attendance if it is not an administrative unit, the administrative unit of residence, and the district of residence if it is not an administrative unit.

4.07(2)(b) If the administrative unit of attendance and the district of attendance, if it is not an administrative unit, on behalf of the on-line program, contracts with the administrative unit of residence for all special education and related services, then all state and federal special education funds shall be forwarded to the administrative unit of residence for those services.

4.07(2)(c) Additional contract elements for contracts involving speech-language instruction and/or related services.

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

4.07(2)(c)(i) a statement that the child's IEP specifies speech-language instruction and/or related services, and a description of the nature and duration of such services as specified by the IEP;

- 4.07(2)(c)(ii) a statement identifying which entity (i.e., the administrative unit of attendance, the administrative unit of residence or a third party) will deliver such services;
- 4.07(2)(c)(iii) if the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of residence is failing, or has failed, to provide appropriate services as specified by the child's IEP.
- 4.07(2)(c)(iv) if the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services and the district of residence will pay the tuition costs for such services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of attendance is failing, or has failed, to provide appropriate services as specified by the child's IEP.
- 4.07(2)(c)(v) if the on-line program is providing the speech-language instruction and/or related services, a statement describing whether the costs of providing the speech-language instruction and/or related service will be an add-on to the tuition cost rate approved by the State Board and an identification of what those costs will be; and
- 4.07(2)(c)(vi) if the speech-language instruction and/or a related service are to be provided by the on-line program through a third party contractor that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the services for the amount of time specified on the child's IEP. If such services are to be provided by the on-line program or a third party contractor of the on-line program, the contract shall contain a statement describing the responsibilities of the

parties if it is determined that the service provider is failing, or has failed, to provide appropriate services as specified by the child's IEP.

4.07(2)(c)(vii) if speech-language instruction and/or related services associated with child find are being claimed, then such instruction and/or related services must be included in the on-line program's tuition cost rate.

4.07(2)(d) Change in District of Residence

If there is a change in the child's district of residence the on-line program must notify the new district of residence in accordance with Section 4.06(3) of these Rules. The on-line program must also enter into a tuition contract with the new district of residence in accordance with Section 4.07(2) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

4.07(2)(e) If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

4.07(2)(f) Contract Timelines

4.07(2)(f)(i) The district of attendance shall send the proposed tuition contract to the district of residence within 15 calendar days following the date that the child's IEP team determines that the on-line program is an appropriate placement for the child.

4.07(2)(f)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section

22-20-109(6), C.R.S., even though a contract has not been executed.

**2220-R-5.00            PROVISION OF SERVICES**

**5.01                    Free Appropriate Public Education**

Each administrative unit shall provide a free appropriate public education in the least restrictive environment to children with disabilities within its jurisdiction, including children with disabilities who have been suspended or expelled from school. Each administrative unit shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even if the child is advancing from grade to grade. A "free appropriate public" education shall be defined as:

- 5.01(1)            "Free" education shall be the provision of special education without cost to the child or to his/her parent(s) or guardian except for those fees that are imposed on non-disabled children or their parent(s).
- 5.01(2)            "Appropriate" education shall be the provision of educational services that meet the individual needs of children with disabilities as identified on the individualized educational programs (IEPs).
- 5.01(3)            "Public" education shall be the provision of educational services at public expense, under public supervision and direction and without charge to the family, that meets the standards of the Department of Education and are provided in conformity with an IEP.

**5.02                    Least Restrictive Environment**

Least restrictive environment shall mean an environment in which a child with disabilities is educated with children who do not have disabilities, unless:

the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, or

when provided with supplementary aides and services, the nature or severity of the disability is so disruptive that the education of other children in such classes would be significantly impaired.

This also applies to any student with a disability placed by a public agency, including those placed in state operated programs or eligible facilities.

- 5.02(1)            Placement of children with disabilities in a school or setting other than the home school by the administrative unit shall be as close as possible to the child's home.

- 5.02(2) The administrative unit shall ensure that opportunities are provided for children with disabilities to participate with children without disabilities in academic, nonacademic and extra curricular activities as determined by the needs of the child.
- 5.02(3) The rationale for placement of a child with a disability in an alternative to the home school shall be documented on the IEP form.
- 5.02(4) When choosing between two or more appropriate placements, the administrative unit shall consider the cost.
- 5.02(5) The rationale for providing services outside of the regular classroom shall be based on student needs and shall be documented on the IEP.

**5.03 Special Education Services**

- 5.03(1) Each administrative unit shall make available special education and related services for the education of any child with disabilities between the ages of three and twenty-one and may make such services available below the age of three. Special education services shall mean specially designed instruction to meet the unique needs of a child with a disability.
  - 5.03(1)(a) “Specially Designed Instruction” shall mean that instruction which is specifically designed according to the guidelines developed by the Department of Education.
  - 5.03(1)(b) Related services shall mean transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education instructional services.
  - 5.03(1)(c) Special education instructional and related services are those services required to enable a child with disabilities to receive an appropriate education.
- 5.03(2) Each administrative unit shall have a written description of its comprehensive delivery system.
- 5.03(3) The comprehensive delivery system shall include a continuum of special education services. Such continuum shall include:
  - 5.03(3)(a) Regular education with supports and/or modifications, that is, either the curriculum, method of presentation, instructional strategies or classroom environments are modified.
  - 5.03(3)(b) Special classes in which educational services are provided for part or all of the school day in order to meet the identified needs of the child.

- 5.03(3)(c) Special programs on or off campus in which educational services are provided in order to meet the identified educational needs of the child.
- 5.03(3)(d) Options of providing services in existing out-of-unit locations as dictated by child's' needs when such services are not available within the unit. These services may include but not be limited to:
  - 5.03(3)(d)(i) Special programs off campus in which educational services are provided in order to meet the identified educational needs of the child.
  - 5.03(3)(d)(ii) Residential facilities, hospitals or institutional settings when the child's condition and/or the home environment precludes the child from attending a public school facility.
  - 5.03(3)(d)(iii) Home and community services.
- 5.03(4) The delivery system shall include services in:
  - 5.03(4)(a) Academics: those services which are defined by each district for all its students with appropriate adaptations and modifications for students with disabilities.
  - 5.03(4)(b) Developmental/Compensatory Skill Development: those services which enhance cognitive, communicative, physical and social-emotional development and teach students the skills critical to compensate for their disability.
  - 5.03(4)(c) Transition/Life Skill/Career Development: those services which are necessary to teach students to function independently or interdependently in current and future environments including school, home, employment and the community.
- 5.03(5) The delivery system shall also include:
  - 5.03(5)(a) Services which are provided directly (to the child with disabilities), indirectly (to the providers of services or to the parent(s) and families of the children with disabilities) and in combination.
  - 5.03(5)(b) An explanation of how these service providers are organized to meet the needs of students.

**5.04 Placement**

Placement of a child for special education services as stated on the IEP and assignment of special staff responsibilities shall be made by the director of special education or designee, who shall place the child with disabilities in the least restrictive environment consistent with the placement decision of the individualized education planning team, including the parents and other persons who are knowledgeable about the child, the meaning of the evaluations and the placement options.

5.04(1) Change in placement.

5.04(1)(a) Change in Location/Facility.

A change in class location, a change in program location, a change of location of a related service and a transfer from one school to another with the same district are administrative decisions and may or may not constitute a change in placement. Such decisions should be made on a case by case basis with consideration for the impact programs and services and with consideration for the impact on the child's total education. Such changes do not require written notice in accordance with section 6.02 of these Rules nor an IEP meeting.

5.04(1)(b) Change in program/services.

When a child's educational program is materially altered, such as a change in the amount of a given service, and not an instance which involves only a change in the physical location of the program, the change in program/services is considered a change in placement and must be determined by an IEP team.

5.04(1)(b)(i) Written notice of such changes must be provided to the parent.

5.04(1)(b)(ii) Consent is not required.

5.04(1)(b)(iii) A non-significant change in placement may be made by an IEP team without reassessment.

5.04(1)(c) Change in building level.

When a child changes level (i.e. from elementary school to middle school) this may be considered either a change in location or a change in program/services, depending on the circumstances.

5.04(2) Significant change in placement.

- 5.04(2)(a) A significant change in placement for educational purposes includes placement or referral to a private school or facility by the administrative unit, addition or termination of an instructional or related service or any change which would result in the following:
- 5.04(2)(a)(i) the child being educated with non-disabled children for an additional or lesser period of time,
  - 5.04(2)(a)(ii) the child having different opportunities to participate in nonacademic and extracurricular services,
  - 5.04(2)(a)(iii) the new placement option being a different option on the continuum of alternative placements in accordance with Section 5.03 (3) of these Rules, or
  - 5.04(2)(a)(iv) the child transfers from a brick and mortar school to an on-line program or vice versa.
- 5.04(2)(b) A significant change in placement shall be made upon consideration of reassessment. Such change shall be made only by an IEP team with the addition of those persons conducting such assessment. However, reassessment is not required before termination of a student's eligibility due to graduation with a regular high school diploma or exceeding the age of eligibility.
- 5.04(3) Placements in Private Schools or Eligible Facilities by the Administrative Unit
- 5.04(3)(a) Prior to an administrative unit placing a child with a disability in, or referring a child to, a private school or facility, the administrative unit shall initiate and conduct a meeting to develop an IEP in accordance with these Rules.
  - 5.04(3)(b) The administrative unit shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the administrative unit shall use other methods to ensure participation, including individual or conference telephone calls.
  - 5.04(3)(c) After a child with a disability enters a private school or eligible facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or eligible facility at the discretion of the administrative unit.

- 5.04(3)(d) If the private school or eligible facility initiates and conducts these meetings, the administrative unit shall ensure:
  - 5.04(3)(d)(i) That the parents and an administrative unit representative are involved in any decision about the child's IEP, and agree to any proposed changes in the IEP before those changes are implemented; and
  - 5.04(3)(d)(ii) That the IEP meeting is conducted in accordance with these Rules.
- 5.04(3)(e) It is the responsibility of the administrative unit of residence to ensure that special education and related services are provided consistent with the IEP and at no cost to the parent.

#### 5.04(4) Placements of Children in Private Schools by Their Parents

- 5.04(4)(a) If the parents of a child with a disability, who previously received special education and related services in an administrative unit, enroll the child in a private school without the consent of or referral by the administrative unit, the administrative unit is not responsible for the cost of that enrollment, unless a court or hearing officer determines that the private school placement is appropriate and requires the administrative unit to reimburse the parents because it finds that the administrative unit had not made a free appropriate public education available to the child in a timely manner. A hearing officer or court may find a placement to be appropriate even if it does not meet the standards that apply to education provided by the administrative unit.
- 5.04(4)(b) The cost of reimbursement may be reduced or denied if:
  - 5.04(4)(b)(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the administrative unit, including stating their concerns and their intent to enroll their child in a private school; or
  - 5.04(4)(b)(ii) If at least ten calendar days prior to removal of the child from the public school, the parents did not give written notice to the administrative unit of their

rejection of the placement proposed by the administrative unit, their concerns and their intent to enroll their child in a private school; or

5.04(4)(b)(iii) If, prior to the parent's removal of the child from the public school, the public agency informed the parents, through the procedures described in 6.02 of these Rules, of its intent to evaluate the child, including a statement of the purpose of the evaluation, but the parents did not make the child available for the evaluation; or

5.04(4)(b)(iv) If the court or hearing officer makes a judicial finding of unreasonableness with respect to actions taken by the parents.

5.04(4)(c) The cost of reimbursement may not be reduced or denied for failure to provide the notice if:

5.04(4)(c)(i) the parent is illiterate and cannot write in English; or

5.04(4)(c)(ii) the school prevented the parent from providing the notice; or

5.04(4)(c)(iii) the parents had not received a statement of parental rights describing the notification requirement; or

5.04(4)(c)(iv) if taking the actions described in Section 5.04(4)(b)(i) and (ii) would likely have resulted in physical or serious emotional harm to the child.

**2220-R-6.00**

**SPECIAL EDUCATION PROCEDURAL SAFEGUARDS**

**6.01 Confidentiality of Information**

Each administrative unit or eligible facility shall designate one or more employees to serve as official special education records custodian who shall be responsible for the maintenance, care and keeping of records on children with disabilities and who shall insure the confidentiality of any personally identifiable information.

**6.01(1) Parents rights to review records.**

Each administrative unit or eligible facility shall permit parent(s) to inspect and review any education records relating to their children which are collected, maintained or used by the agency in accordance with the above.

**6.01(2) Record of access.**

Each administrative unit or eligible facility shall keep a record of parties, as allowed by law, obtaining access to education records collected, maintained or used under this part (except access by parent(s)), and authorized employees of the administrative unit, including the name of the party, the date access was given, and the purpose for which the party was authorized to use the records.

Parties allowed by law to access records are: school officials, including teachers, who have a legitimate educational interest; officials of other schools in which the student seeks to enroll; authorized representatives of the Comptroller General of the U.S. Secretary of Education, an administrative agency; State Education Agency authorities; testing organizations (if anonymous); accrediting organizations; a student at the age of eighteen; parents of a dependent student, even if the student is of majority; those protecting the health and safety of the student; and others in emergency.

**6.01(3) Opportunity for a hearing.**

Each administrative unit or eligible facility shall, on request, provide an opportunity for a hearing to parents who believe that data collected or maintained by the agency is inaccurate or misleading, or violates the privacy or other rights of the child.

**6.01(4) Prior consent for disclosure.**

The special education records custodian shall obtain written parental consent before permitting personally identifiable information to be disclosed, except for those person(s) allowed by law.

**6.01(5) Transfer of records.**

Special education records shall be transferred as part of the general school records from one administrative unit, private school or approved facility to another upon written or verbal request of the parent or school official when the child has transferred. Written consent of the parent is not required to transfer education records (including assessment information and the IEP) from one education agency to another for the purpose of provision of appropriate educational services. When a child transfers from one administrative unit or facility to another and special education records are transferred:

6.01(5)(a) All applicable timelines shall transfer.

6.01(5)(b) All items of written consent shall transfer.

6.01(6) Destruction of information.

Each administrative unit or eligible facility shall establish procedures for destruction of information.

6.01(7) The rights of the parents regarding educational records shall be transferred to the child at the age of 18 unless the parents have been awarded legal guardianship by the court. When the rights of the parents regarding educational records have been transferred to the child, the administrative unit, state operated program or eligible facility must provide the notices required by Sections 4.01(2)(b), 4.01(3)(j)(ii), 4.02(5)(e), 6.02, and 6.03(2)(d) of these Rules to both the child and the parents.

## **6.02 Prior Written Notice and Written Consent**

6.02(1) Each administrative unit or eligible facility shall provide prior written notice to parent(s) a reasonable time before the unit/facility:

6.02(1)(a) proposes to or refuses to initiate or change the identification, evaluation or educational program of the child or the provision of a free appropriate public education to the child, or

6.02(1)(b) proposes to terminate services due to graduation with a regular high school diploma, or

6.02(1)(c) proposes to terminate services due to the student exceeding the age of eligibility as defined in these Rules, or

6.02(1)(d) proposes to transfer rights regarding educational records to the student at the age of 18 (in this situation, both the parents and the student shall be notified).

6.02(2) Each administrative unit shall obtain written informed consent from the parent(s) prior to conducting assessments in accordance with Section

4.01(3)(c) and 4.01(3)(j) of these Rules and prior to initial placement of the child with disabilities into special education.

6.02(3) Written notice shall be communicated in the native language of the child's parents.

### **6.03 Due Process Hearings**

6.03(1) Each administrative unit shall adopt and implement procedures for conducting due process hearings when there is disagreement regarding any of the following matters:

6.03(1)(a) Determination of eligibility for services under ECEA.

6.03(1)(b) Placement of a child into an educational program.

6.03(1)(c) Failure to obtain written parental consent prior to conducting an initial assessment and/or prior to providing a child with disabilities initial special education services.

6.03(1)(d) The provision of a free appropriate public education.

6.03(2) A parent, administrative unit, or a local school board that is a member of an administrative unit may request a due process hearing on any matter set forth above.

6.03(2)(a) Disclosure of evaluations and recommendations.

6.03(2)(a)(i) At least 5 business days (two business days for an expedited hearing) prior to the hearing, all evaluations completed by that date, and recommendations based on those evaluations that will be used at the hearing, must be disclosed to all parties.

6.03(2)(a)(ii) The hearing officer may prevent any party that fails to comply with prior disclosure from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

6.03(2)(b) Not later than 45 days after receipt of a written request for a hearing, a final decision must be reached and a copy of that decision mailed to the parents, administrative unit and local board of education unless the timeline is appropriately extended.

6.03(2)(c) Expedited due process hearings

6.03(2)(c)(i) An expedited due process hearing may be requested by a parent when there is a

disagreement regarding a manifestation determination or an interim alternative educational placement; or by an administrative unit when it maintains that it is dangerous for the child to be in the current placement.

6.03(2)(c)(ii) Hearing officers for expedited due process hearings are those referenced in 6.03(7) and 6.03(8) of these Rules.

6.03(2)(d) Whenever a due process hearing is requested, the special education director for the administrative unit requesting or responding to the due process hearing request shall provide the parent(s) with a copy of a document explaining the procedural safeguards set forth in Section 6.00 of these Rules.

6.03(3) Request for hearing by parent.

6.03(3)(a) Hearings shall be initiated by a parent submitting a written request to the director of special education of an administrative unit or district that is a member of an administrative unit. The written request shall include:

6.03(3)(a)(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

6.03(3)(a)(ii) a description of the nature of the problem, including relevant facts;

6.03(3)(a)(iii) a proposed resolution of the problem to the extent known and available to the parent(s) at the time; and

6.03(3)(a)(iv) A parent's right to a due process hearing shall not be delayed or denied for failing to provide the above information.

6.03(3)(b) Upon receipt of request, within ten calendar days or the first business day after the tenth day, the hearing officer shall be designated according to the following procedures:

6.03(3)(b)(i) The district shall notify the special education director or designee of the administrative unit of a request for hearing.

6.03(3)(b)(ii) The district or administrative unit shall telephone the Department of Education with a request for available hearing

officers and confirm the request in writing accompanied by a copy of the request for the due process hearing.

6.03(3)(b)(iii) The Department of Education shall provide by telephone to each party within four calendar days the names of three available hearing officers and will confirm the names in writing accompanied by biographical information about the available hearing officers.

6.03(3)(b)(iv) The parent shall notify the district or administrative unit of the name of the individual that the parent eliminates from the list of three. This action shall occur so as to allow the district or administrative unit at least two days out of the total of ten days during which to strike another one of the remaining two names and to select the hearing officer.

6.03(3)(b)(v) The district or administrative unit shall notify the parent and the Department of Education as to whom was selected. The Department of Education will notify the hearing officer of his/her selection. If such notification is by telephone it must be confirmed in writing.

6.03(3)(b)(vi) For expedited due process hearings, the hearing officer shall be appointed by the Colorado Department of Education from the registry of hearing officers on a rotating basis depending on availability.

6.03(3)(c) If either the district, administrative unit or parent fails to eliminate a name from the hearing officer list in a timely manner the other party will notify the Department of Education which will determine if there is unwarranted delay. The Department of Education will then allow the party not responsible for the delay to select the hearing officer. If such notification is by telephone it must be confirmed in writing.

6.03(4) Request for a hearing by an administrative unit or district that is a member of an administrative unit.

6.03(4)(a) Hearings shall be initiated by an administrative unit or district submitting a written request to the Department of Education, Special Education Services Unit and the parent

(and the administrative unit if a member district is making the request). The 45 day timeline commences upon receipt of the request by the Department of Education.

6.03(4)(b) Within ten calendar days or the first business day after the tenth day, a hearing officer shall be designated according to the following procedures:

6.03(4)(b)(i) The Department of Education shall provide by telephone to each party within four calendar days the names of three available hearing officers and will confirm the names in writing accompanied by biographical information about the available hearing officers.

6.03(4)(b)(ii) The requesting party shall notify the parent of the name of the individual that it eliminates from the list of three. This action shall occur so as to allow the parent at least two days out the total of ten days during which to strike another one of the remaining two names and to select the hearing officer.

6.03(4)(b)(iii) The parent shall notify the district or administrative unit of the name the parent eliminates.

6.03(4)(b)(iv) The district or administrative unit shall notify the Department of Education and the Department of Education will notify the hearing officer of his/her selection. If such notification is by telephone it must be confirmed in writing.

6.03(4)(b)(v) For expedited due process hearings, the hearing officer shall be appointed by the Colorado Department of Education from the registry of hearing officers on a rotating basis depending on availability.

6.03(4)(c) If either the district, administrative unit or parent fails to eliminate a name from the hearing officer list in a timely manner the other party will notify the Department of Education which will determine if there is unwarranted delay. The Department of Education will then allow the party not responsible for the delay to select the hearing officer. If such notification is by telephone it must be confirmed in writing.

6.03(5) Request for a hearing by a child with disabilities.

A child with disabilities or suspected of having a disability, who is 18 years of age, and has not been declared incompetent, may request a hearing. In such instances the procedures described in Section 6.03 (3) of these Rules shall apply.

6.03(6) Due process hearing procedures.

6.03(6)(a) The hearing officer shall:

6.03(6)(a)(i) Set forth the procedures and timelines to be followed during the hearing.

6.03(6)(a)(ii) Schedule the time and place for the hearing.

6.03(6)(a)(iii) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined.

6.03(6)(a)(iv) At the request of either party secure subpoenas from the Department of Administration, Division of Administrative Hearings, administrative law judges to compel attendance of witnesses at the hearing.

6.03(6)(a)(v) Ensure that a written or electronic verbatim account of the hearing is kept.

6.03(6)(a)(vi) Notify the Department of Education, in writing, of any disposition of a request for a hearing prior to the issuance of a decision.

6.03(6)(b) The hearing officer may, at the request of either party, grant specific extensions of the time beyond the 45 day timeline (except in an expedited due process hearing) in which to reach a final decision and mail a copy of the decision to the parties.

6.03(6)(c) Any party to a hearing has the right to:

6.03(6)(c)(i) Be accompanied and advised by counsel and by individuals with special knowledge and training with respect to problems of children with disabilities.

- 6.03(6)(c)(ii) Present evidence (including the results of an evaluation obtained at private expense) and confront and cross-examine witnesses.
  - 6.03(6)(c)(iii) Request the hearing officer to secure subpoenas pursuant to Section 6.03(6)(a)(iv) of these Rules, to compel the attendance of witnesses.
  - 6.03(6)(c)(iv) Prohibit the introduction of any evidence, either through witnesses or documents, at the hearing if the witness has not been identified or the document has not been disclosed at least five business days before the hearing (two business days for an expedited hearing).
  - 6.03(6)(c)(v) Obtain a written or, at the option of the parent, electronic verbatim record of the hearing. The cost for transcription of the record of the hearing is the responsibility of the administrative unit and shall be at no cost to the parent.
  - 6.03(6)(c)(vi) Obtain a written or electronic copy of the findings of fact and decision, at no cost.
- 6.03(6)(d) Decision of the hearing officer.
- 6.03(6)(d)(i) The hearing officer shall render, in writing, all findings of fact and the decision based upon the evidence. The hearing officer shall mail it by certified mail to the parents, administrative unit, local board of education and the Department of Education within 45 days after receipt of the request for hearing or within the timeline established pursuant to Section 6.03(6)(b) of these Rules. In an expedited due process hearing, the written decision shall be mailed to the parties within 45 days of the administrative unit's receipt of the request for the hearing, without exceptions or extensions. The timelines are the same whether the hearing was requested by the administrative unit or the parent.

- 6.03(6)(d)(ii) Along with the decision mailed to the parties, the hearing officer shall include a copy of the portion of these Rules regarding state level review.
- 6.03(6)(d)(iii) The decision shall be written so that it does not contain the name of the child or parent(s) other than as contained in a cover page.
- 6.03(6)(d)(iv) The record of the hearing shall include all findings of fact, the decision, and tape recording of the hearing, if available. The record shall be forwarded to the Department of Education 45 days after the conclusion of the proceedings if no appeal has been made.
- 6.03(6)(d)(v) The grounds of the decision shall be within the scope of the issues presented on the record.
- 6.03(6)(d)(vi) The Department of Education shall transmit the hearing officer's findings and decision to the State Special Education Advisory Committee and other Department of Education trained hearing officers.
- 6.03(6)(d)(vii) If there is no appeal, the decision of the hearing officer is final and binding upon the parties.
- 6.03(6)(e) Authority of Hearing Officers
- 6.03(6)(e)(i) A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer in an expedited due process hearing:
- Determines that the public agency has demonstrated by substantial evidence/beyond a preponderance of the evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

- Considers the appropriateness of the child's current placement;
- Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, has been determined by the IEP team; enables the child to continue to progress in the general curriculum and to continue to receive services and modifications to enable the child to meet the goals set out in the IEP; and that it includes services and modifications to address the behavior and is designed to prevent the behavior from recurring.

6.03(6)(e)(ii) A hearing officer shall apply these same standards in reviewing a decision by the administrative unit to place a child in an interim alternative educational setting or a manifestation determination.

6.03(6)(e)(iii) In reviewing a manifestation determination, the hearing officer shall determine whether the administrative unit demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the following requirements:

- All relevant information including assessment information, other relevant information supplied by the parents of the child, observations of the child and the child's IEP and placement were considered;
- A determination was made that in relation to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services,

supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; and

- A determination was made that the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action and that the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

6.03(7) Registry of due process hearing officers.

The Department of Education, Special Education Services Unit, shall keep a list of persons trained by the Department of Education who may serve as due process hearing officers. The list must include a statement of the qualifications of each of these persons. Parties to a hearing shall select hearing officers from this list. A person who otherwise qualifies as a hearing officer is not an employee of a public agency solely because that hearing officer is paid by the agency to conduct a hearing.

6.03(8) Individuals described by the following criteria shall not be eligible as hearing officers:

6.03(8)(a) Officers and employees of the State Board of Education.

6.03(8)(b) Officers and employees of school districts and administrative units.

6.03(8)(c) Any person having a personal or professional interest, including persons involved with the care of the child, which would conflict with his or her objectivity in a hearing.

6.03(8)(d) Parents of children with disabilities from birth to 21.

6.03(9) Right to appeal decision of impartial hearing officer.

Either party may obtain state level review of the decision of the impartial hearing officer including a decision rendered in an expedited due process hearing. The state level review shall be conducted on behalf of the Commissioner of Education by an administrative law judge of the Colorado State Government, General Support Services, Division of Administrative Hearings.

6.03(10) Procedure for appealing decision of impartial hearing officer.

- 6.03(10)(a) Any party who seeks to appeal the decision of an impartial hearing officer shall file with or mail to the Division of Administrative Hearings within 30 days after receipt of the impartial hearing officer's decision:
- 6.03(10)(a)(i) A notice of appeal.
  - 6.03(10)(a)(ii) A designation of the transcript. A party may designate a portion of the tape recorded record or arrange for a transcript of the tape recorded record.
- 6.03(10)(b) Simultaneously with mailing or filing the notice of appeal and designation of transcript with the Division of Administrative Hearings, the appealing party shall mail copies of these documents to the Department of Education and to all other parties in the proceeding before the impartial hearing officer at their last known addresses.
- Within five days of receipt of a notice of appeal, any other party may file a cross appeal.
- 6.03(10)(c) The notice of appeal shall contain the following:
- 6.03(10)(c)(i) The caption of the case, including case number and names of all parties.
  - 6.03(10)(c)(ii) The party or parties initiating the appeal.
  - 6.03(10)(c)(iii) A brief description of the nature of the case and the order being appealed.
  - 6.03(10)(c)(iv) A list of the issues to be raised on appeal.
  - 6.03(10)(c)(v) A copy of the findings of fact and decision of the impartial hearing officer being appealed.
  - 6.03(10)(c)(vi) A certificate of service showing the date the copy of the notice of appeal was mailed to the Department of Education and to all parties in the proceeding before the impartial hearing officer. All subsequent documents and pleadings filed with the Division of Administrative Hearings shall similarly contain a certificate of service showing that a copy was mailed to all parties.
- 6.03(10)(d) A notice of cross appeal shall contain those items listed in 6.03(10)(c)(i-iv) above along with a certificate of service.

- 6.03(10)(e) At the time the notice of appeal is filed or mailed, the appealing party shall also file with or mail to the Division of Administrative Hearings either a statement that no transcript is necessary for the appeal and a review of the tape recorded record is sufficient or a designation of all portions of the transcript necessary for resolution of the appeal. No transcript is required if the issues on appeal are limited to pure questions of law.
- 6.03(10)(f) Within five days after the receipt of the notice of appeal and designation of transcript or tape recording, the other party may file with the Division of Administrative Hearings a designation of any additional portions of the transcript which the party believes are necessary for resolution of the appeal.
- 6.03(10)(g) Whichever party appeals the decision shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days of the date the notice of appeal is mailed or filed.
- 6.03(10)(g)(i) Whichever party appeals the decision shall, simultaneously with filing or mailing the notice of appeal and designation of record, contact the court reporter and order the transcript or arrange for the transcription of a tape recorded record or submit the entire tape recorded record.
- 6.03(10)(g)(ii) Immediately upon filing any additional designations pursuant to Section 6.03(10)(f) of these Rules, any party submitting designations shall order from the court reporter the transcript or arrange for transcription in the case of a tape recorded record and shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days, or submit the entire tape recording.
- 6.03(10)(g)(iii) A party requesting a written transcript is responsible for paying for it. A party requesting parts of a written transcript by filing an additional designation is responsible to pay for those portions of the transcript. Parent(s) shall not be required to pay for the cost of a copy of the tape recorded record for an appeal. The transcript or portions thereof shall be made available to any party at reasonable

times for inspection or copying at the copier's expense.

- 6.03(10)(h) Upon receipt of the notice of appeal, the administrative law judge assigned to hear the appeal shall direct the impartial hearing officer to certify and transmit to the administrative law judge, within seven days, all pleadings and documents filed with the impartial hearing officer, all exhibits and the decision of the impartial hearing officer.
- 6.03(11) State level review procedures.
  - 6.03(11)(a) Unless otherwise ordered by the administrative law judge, briefs shall be filed and oral argument held within 20 days after the filing or mailing of the notice of appeal.
  - 6.03(11)(b) In conducting a state level review, the administrative law judge shall:
    - 6.03(11)(b)(i) Examine the transcript and certified record received from the impartial hearing officer.
    - 6.03(11)(b)(ii) Seek or accept additional evidence, if needed.
    - 6.03(11)(b)(iii) Afford the parties an opportunity for oral or written argument, or both, if appropriate, at a time and place reasonably convenient to the parties.
    - 6.03(11)(b)(iv) Determine and assure that the procedure at the hearing before the impartial hearing officer was in accordance with the requirements of due process.
    - 6.03(11)(b)(v) Make a final and independent decision and mail such to all parties within 30 days after the request for a review is received.
  - 6.03(11)(c) The administrative law judge may grant specific extensions of any of the timelines, at the request of either party, once a timely appeal has been received.
  - 6.03(11)(d) In connection with the state level review, the parties shall have the following rights:
    - 6.03(11)(d)(i) To be accompanied and advised by counsel and by individuals with special knowledge with respect to the problems of children with disabilities.

- 6.03(11)(d)(ii) If further evidence is to be taken, to present evidence and confront, cross-examine, and compel the attendance of witnesses.
  - 6.03(11)(d)(iii) To prohibit the introduction of any evidence through witnesses or documents at the hearing if the witness has not been identified or the document has not been disclosed to that party at least five days before the hearing.
  - 6.03(11)(d)(iv) To obtain a written or electronic verbatim record of the hearing.
  - 6.03(11)(d)(v) To obtain a written determination upon state level review, including a written, or at the option of the parents, electronic copy, of the findings of fact and a decision.
- 6.03(12) The decision made upon a state level review shall be final except that either party has the right to bring civil action in an appropriate court of law, either federal or state. In any civil action brought under this section, the court receives the records of the administrative proceedings from the hearing officer, hears additional evidence at the request of a party, bases its decision on the preponderance of the evidence, and grants the relief that the court determines to be appropriate.
- 6.03(13) Attorneys' fees.
- In any administrative proceeding brought under C.R.S. 22-20-101, et seq., the impartial hearing officer or the administrative law judge may not award reasonable attorneys' fees as part of the cost to the parent(s) or guardian of a child with disabilities who is the prevailing party. Such fees may only be awarded by the court in a civil action brought under these Rules.
- 6.03(14) Child's status during proceedings
- 6.03(14)(a) During the pendency of any due process hearing or appeal, unless the administrative unit and the parents agree otherwise, the child shall remain in his or her current educational placement.
  - 6.03(14)(b) If the decision of a hearing officer in a due process hearing, or an administrative law judge in an appeal, agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the administrative unit and the parents for purposes of paragraph (a) above.

- 6.03(14)(c) If a parent requests a hearing or an appeal of a disciplinary action; or to challenge the interim alternative educational setting; or the manifestation determination; the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for the interim alternative educational placement, whichever comes first, unless the parent and the administrative unit agree otherwise.

**2220-R-7.00**

**COORDINATION BETWEEN SEA AND LEAs**

**7.01**

**Record Keeping**

To meet the requirements of Sections 22-20-104(3) and (4), C.R.S., an administrative unit shall maintain a management and information system which provides for the collection, documentation, aggregation, and reporting of student, staff, revenue and expenditure data.

7.01(1)

Student data.

7.01(1)(a) Administrative units should maintain an individual student data base of the following information:

7.01(1)(a)(i) Student name.

7.01(1)(a)(ii) Date of birth.

7.01(1)(a)(iii) Primary disability.

7.01(1)(a)(iv) Student's gender and ethnicity.

7.01(1)(a)(v) Primary educational setting.

7.01(1)(a)(vi) Date of the most recent meeting at which the child was determined to have a disability.

7.01(1)(a)(vii) Date of the most recent meeting at which the IEP was reviewed.

7.01(1)(a)(viii) Individual staff who are providing special education programs and services identified in the student's IEP.

7.01(1)(b) Administrative units, community centered boards, and eligible facilities should maintain individual student records that contain the following:

7.01(1)(b)(i) Information about the disposition of each referral.

- 7.01(1)(b)(ii) Signed permission forms for initial assessment and initial placement.
  - 7.01(1)(b)(iii) Verification that parent(s) were advised of and understood their due process rights.
  - 7.01(1)(b)(iv) Any written assessment reports.
  - 7.01(1)(b)(v) Documentation that appropriate written notice was given to parent(s).
  - 7.01(1)(b)(vi) Documentation that required participants were in attendance at meetings.
  - 7.01(1)(b)(vii) Records of all meetings at which the child was determined to have a disability.
  - 7.01(1)(b)(viii) A copy of all IEPs.
  - 7.01(1)(b)(ix) Any additional information which documents that the child is eligible for special education services.
- 7.01(1)(c) Individually identifiable information shall be held confidential and protected in accordance with state statutes and regulations, and in conformation with Section 7.01 of these Rules.
- 7.01(1)(d) Destruction of records shall be in compliance with Section 6.01(6) of these Rules.
- 7.01(2) Staff data.
- Administrative units should maintain the following data for all special education services staff:
- 7.01(2)(a) Name.
  - 7.01(2)(b) Special education position assignment.
  - 7.01(2)(c) FTE and salary attributable to special education, and source of funds supporting that salary.
  - 7.01(2)(d) Documentation of time spent with students with disabilities for each staff member who is employed part-time in special education and part-time in regular education.
- 7.01(3) Revenue and expenditure data.

- 7.01(3)(a) Administrative units shall maintain auditable records of all special education expenditures and of the state, federal, local and other revenues which are received in support of those expenditures.
- 7.01(3)(b) Using the accrual basis of accounting, administrative units shall operate a budgeting and accounting procedure which records the objects of expenditure for each special education instructional and support service area.
- 7.01(3)(c) Community centered boards and eligible facilities shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

**7.02 Reporting**

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

**7.03 Documentation of Tuition Costs**

**7.03(1) Community Centered Board and Eligible Facilities.**

- 7.03(1)(a) Annually, community centered boards and eligible facilities must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs charged to an administrative unit of residence for special education services provided to a child with disabilities who is determined to be the responsibility of the administrative unit of residence.
- 7.03(1)(b) The documentation must be submitted on forms developed by the Department of Education, and must include the following:
  - 7.03(1)(b)(i) Special education expenditures defined in Section 2.03 of these Rules.
  - 7.03(1)(b)(ii) The number of days in the school year during which the community centered boards or eligible facility offers the program.
  - 7.03(1)(b)(iii) A separate set of proposed costs for services that differ from those offered during the regular academic year.

- 7.03(1)(c) Tuition costs shall be determined after deducting applicable state, federal, or other funds received by the community centered board or eligible facility for the special education program.
- 7.03(1)(d) A percentage of the per pupil operating revenue, to be determined annually by the Department of Education, shall be applied as revenue toward indirect costs of the special education program, such as utilities, maintenance, administrative support services, regular education, and other items that may be determined by the Department.
- 7.03(1)(e) In no instance shall the total revenues received by the community centered board or eligible facility for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services. Based on this information, the Department will recommend to the State Board of Education tuition rates for community centered boards and eligible facilities. Costs for additional services required by an individual child, and documented on an IEP may be negotiated with the administrative unit of residence.

7.03(2) Charter Schools, excluding charter schools that are on-line programs

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

- 7.03(2)(a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate.
- 7.03(2)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:
  - 7.03(2)(b)(i) special education expenditures defined in Section 2.03 of these Rules;

- 7.03(2)(b)(ii) the number of days in the school year during which the charter school offers the program;
  - 7.03(2)(b)(iii) expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and
  - 7.03(2)(b)(iv) the average number of children enrolled in the charter school, and the number of those children with disabilities.
- 7.03(2)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering district, and shall be reasonably consistent with the chartering school district's ratios for serving students with comparable disabilities.
- 7.03(2)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.
- 7.03(2)(e) Tuition costs shall be determined after deducting applicable state, federal, and other revenues received by the charter school for the educational program as defined in Section 2.03(3) of these Rules.
- 7.03(2)(f) If the charter school accepts a child for which it has not received PPR funding the PPR amount must still be included as an applicable revenue for purposes of establishing tuition costs.
- 7.03(2)(g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.
- 7.03(2)(h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.
- 7.03(2)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.

- 7.03(2)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.
- 7.03(2)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for charter schools.
- 7.03(2)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

7.03(3) School Districts

Special Education tuition costs involving two school districts should be negotiated between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, and do not need to be submitted to the Department of Education for approval. This includes costs for children with disabilities who are attending school outside their district of residence under the Public Schools of Choice law. In establishing the tuition cost, all applicable revenues as defined in Section 2.03(3) of these Rules shall be deducted.

7.03(4) On-line Programs, including charter schools that are on-line programs

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

7.03(4)(a) Annually, on-line programs must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to children with disabilities who are enrolled in the on-line program. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate.

7.03(4)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

- 7.03(4)(b)(i) special education expenditures defined in Section 2.03 of these Rules;

- 7.03(4)(b)(ii) the number of days in the school year during which the on-line program offers the program;
- 7.03(4)(b)(iii) expenditures for the regular education program, administration, personnel costs, occupancy, and business services; and
- 7.03(4)(b)(iv) the average number of children enrolled in the on-line program, and the number of those children with disabilities.
- 7.03(4)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the administrative unit of attendance, and shall be reasonably consistent with that unit's ratios for serving students with comparable disabilities.
- 7.03(4)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.
- 7.03(4)(e) Tuition costs shall be determined after deducting applicable state, federal, and other revenues received for the educational program as defined in Section 2.03(3) of these Rules.
- 7.03(4)(f) If the on-line program accepts a child for which it has not received the state minimum PPR funding, the state minimum PPR must still be included as an applicable revenue for purposes of establishing tuition costs.
- 7.03(4)(g) If the on-line program provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.
- 7.03(4)(h) In no case shall the total revenues received by the on-line program for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.
- 7.03(4)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the on-line program.

- 7.03(4)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each on-line program, shall be applied as revenue toward the special education costs submitted on the rate setting form by the program.
- 7.03(4)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for on-line programs.
- 7.03(4)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence, and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

**7.04 Special Education Funding**

7.04(1) Federal funds.

- 7.04(1)(a) Administrative units shall obtain prior approval from the Department of Education for the use of federal funds in support of special education services.
- 7.04(1)(b) The approval criteria and procedures for the use of federal funds shall be governed by relevant rules and regulations promulgated pursuant to state and federal laws.
- 7.04(1)(c) Federally funded programs shall be considered supplementary to the basic program required by the Exceptional Children's Educational Act (ECEA).

7.04(2) ECEA funds.

Under the requirements of Section 22-20-104 (1), C.R.S., an administrative unit shall use its state ECEA funds only on special education services and programs, as outlined in Section 2.03(1) of these Rules.

7.04(3) Payments of ECEA funds.

Beginning with the 1995-96 school year, and every year thereafter, ECEA funds will be distributed as follows:

- 7.04(3)(a) An allocation of \$49,800,756 will be distributed to each administrative unit in proportion to the amount of state ECEA funding the administrative unit received for the 1994-95 fiscal year divided by the appropriation for the 1994-95 fiscal year. A request to distribute these funds shall be submitted to the State Board of Education for approval at its September Board meeting. Payment of

these funds will be delayed until an administrative unit's required student, staff, revenue and expenditure data are submitted to the Department of Education. If a district that is a part of a Board of Cooperative Services changes its membership to another Board of Cooperative Services, the original administrative unit's allocation will be decreased, and that amount will be added to the allocation of the newly formed administrative unit. The proportion of funds that will be transferred will be based on the total payment for the original administrative unit divided by the most recent December count for that unit. This amount per child will then be multiplied by the number of children with disabilities the district had on the previous December count. Once this transfer of funds is made, it will not be amended in future years unless there is a change in the configuration of the administrative unit.

- 7.04(3)(b) Any increase in the appropriation over the amount described above shall be distributed to individual school districts. The increased appropriation shall be divided by the total number of children with disabilities, ages birth through 21, reported by administrative units on the previous December 1 count to determine an amount of funding per child. This per child amount shall then be multiplied by the December 1 count for each school district to determine each district's share of the increased allocation. A request for payment of 100 percent of the increased allocation shall be submitted to the State Board for approval in July, at the beginning of each fiscal year. If an administrative unit's count is adjusted because children are determined to have been ineligible for the count by either the administrative unit or the Department of Education, the administrative unit will submit a check to the Department of Education for the per child amount for each ineligible child, and these funds will be returned to the General Fund.

## **7.05 Monitoring**

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

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

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

- 7.05(1)(a)(i) A determination of compliance with statutes according to the administrative unit on-site checklist developed by the Department of Education.
- 7.05(1)(a)(ii) An assessment of program quality based on the standards established by the Department of Education.
- 7.05(1)(b) Monitoring activities shall be determined by the Department of Education and shall include:
  - 7.05(1)(b)(i) Review of a unit's or facility's comprehensive plan,
  - 7.05(1)(b)(ii) A review of the data routinely collected by the Department of Education,
  - 7.05(1)(b)(iii) A planned comprehensive on-site process to identify and verify compliance with and implementation of policies and procedures as well as delivery of services,
  - 7.05(1)(b)(iv) Count audits consisting of periodic checks of student eligibility criteria through verification of documentation as found in students' files and on individual education programs.
- 7.05(1)(c) Follow-up to assure non-compliance issues have been rectified shall be ongoing. Follow-up of non compliance issues identified from the count audits will occur as part of the comprehensive on-site monitoring process.
- 7.05(2) Within 90 days from the completion of any monitoring procedure or activity, the Department of Education shall provide a written report based on the administrative unit on-site checklist, to the administrative unit/facility which shall include findings, non-compliance items, directives for corrective action, and recommendations for improvement.
  - 7.05(2)(a) Should the Department of Education determine that a unit, State Operated Program, community centered board or facility is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such unit/facility with the legal citation of the statute or regulation it is found to have violated and the directive for corrective action or request for a corrective action plan.
  - 7.05(2)(b) Should the Department of Education determine that a unit, State Operated Program, community centered board or

facility does not reasonably satisfy quality standards or guidelines established by the Department of Education, recommendations will be made.

- 7.05(3) Within 90 days following any report of non-compliance, the administrative unit, State Operated Program, community centered board or facility shall provide the Department of Education with a corrective action plan including timelines, or some documentation that corrective actions ordered by the Department have been made, whichever is applicable.
- 7.05(4) Within 20 days following the receipt of the administrative unit's, State Operated Program, community centered board or facility's corrective action plan, the Department of Education shall acknowledge receipt of such and indicate whether or not it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.
- 7.05(5) If the administrative unit, State Operated Program, community centered board or facility does not agree with any findings or directives for corrective action it may appeal in accordance with Section 7.07 of these Rules.
- 7.05(6) If the Department of Education is unable to secure voluntary compliance through the actions described above, the administrative unit shall be notified of the noncompliance and the subsequent steps to be taken by the Department of Education which may include any of the following or any other appropriate means of enforcing compliance requirements:
- 7.05(6)(a) disapproval or failure to approve in whole or part, the application of the local agency, administrative unit or potential recipient for funding;
  - 7.05(6)(b) order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;
  - 7.05(6)(c) withhold and/or terminate further financial assistance to a local agency, administrative unit or recipient;
  - 7.05(6)(d) suspend payments, under an approved project, to a local agency, administrative unit, or recipient.
- 7.05(7) Information regarding monitoring findings and resolutions shall be forwarded to the appropriate Department of Education staff for consideration in the district's accreditation process.

## **7.06 Variance**

- 7.06(1) If a school district or administrative unit believes that noncompliance with any portion of these Rules is justified and would affect their approval or status as an administrative unit or receipt of acceptable monitoring reports, it may file a written request for variance with the Department of Education. These variance requests are to be distinguished from requests

to the State Board of Education for waivers of state law pursuant to section 22-2-117, C.R.S. Neither the variance process nor the waiver process applies to federal law or regulations. A variance request shall:

7.06(1)(a) Specify the section of these Rules from which a variance is requested.

7.06(1)(b) Identify those conditions unique to the unit/facility or other needs or rationale justifying such request.

7.06(1)(c) Specify methods by which the unit/facility will evaluate and report the educational effectiveness of the variance proposal.

7.06(2) A written notice of approval or denial of the request shall be made by the Department of Education to the unit/facility within 30 days of its receipt of such request.

7.06(2)(a) The approval process shall consider the improved educational effectiveness of such request as demonstrated by the following factors:

7.06(2)(a)(i) Administrative efficiency.

7.06(2)(a)(ii) Cost effectiveness.

7.06(2)(a)(iii) Noninterference with rights and/or procedural safeguards.

7.06(2)(a)(iv) Nonadverse impact on contiguous areas.

7.06(2)(b) If the initial request is approved, the variance shall be in effect for no longer than one school year at which time the unit may request a continuance. Approval of subsequent requests shall take into consideration the above factors.

7.06(2)(c) If the initial request or a continuance is denied, the unit may appeal that decision in accordance with Section 7.07 of these Rules.

## **7.07 Appeals**

7.07(1) Administrative units and eligible facilities may appeal any decision of the Department of Education relating to the unit/facility, to the State Board of Education within 60 days of the receipt of notice from the Department.

7.07(2) The State Board of Education will conduct a hearing and make a determination concerning the appeal within 60 days from the date of request. The decision of the State Board shall be final.

7.07(3) A written notice of denial or approval shall be prepared and delivered to the administrative unit/facility.

**7.08 Procedures for Resolving Disagreements**

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

7.08(1) School Districts

7.08(1)(a) If a district of attendance determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(4), C.R.S., the district of attendance may seek a determination from the State Board in accordance with the following provisions:

7.08(1)(a)(i) If a district of attendance determines that the district of residence has not forwarded to the district of attendance the amount due to it in accordance with the terms of the tuition contract and these rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. A district of attendance that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the district of attendance to complete any requirements prior to seeking a determination from the State Board, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the district of attendance completes said requirements.

7.08(1)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to it, the State Board Shall direct the Department of Education to review the terms of the tuition contract and the relevant information of the district of attendance and the district of

residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. The Department shall request from the district of residence and the district of attendance all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the districts of attendance and residence.

7.08(1)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the district of attendance. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the district of attendance, the district of residence shall pay to the district of attendance, within thirty days after issuance of the decision, the amount improperly withheld.

7.08(1)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the district of attendance may notify the department. the department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the district of attendance.

7.08(1)(a)(v) Third party facilitation

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

The parties agreeing to third party facilitation are responsible for paying its costs.

7.08(1)(b) The dispute resolution procedure established in 7.08(1)(a) may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the district of attendance, or who otherwise has not been attending the district of attendance, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

7.08(2) Charter Schools

7.08(2)(a) If a charter school determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(5), C.R.S., the charter school may seek a determination from the State Board in accordance with the following provisions:

7.08(2)(a)(i) If a charter school determines that the district of residence has not forwarded to the charter school the amount due to the charter school in accordance with the terms of the tuition contract and these Rules, the charter school may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. A charter school that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the charter school to complete any requirements prior to seeking a determination from the State Board, the charter school shall submit the request no later than the end of the next fiscal year following the fiscal year in which the charter school completes said requirements.

7.08(2)(a)(ii) Upon receipt from a charter school of a request for a determination of whether the

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

7.08(2)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department of Education, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the charter school, the district of residence shall pay to the charter school, within thirty days after issuance of the decision, the amount improperly withheld. In addition, the district of residence shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation. If the State Board finds that the district of residence did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

7.08(2)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount

that was improperly withheld, the charter school may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the charter school.

7.08(2)(a)(v) If the State Board finds that the district did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

7.08(2)(a)(vi) Third party facilitation

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

7.08(2)(b) The dispute resolution procedure established in 7.08(2)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying tuition costs for a child who withdrew from the charter school, or who otherwise has not been attending the charter school, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

7.08(3) On-line Programs

7.08(3)(a) If an on-line program determines that the district of residence has not paid the tuition charge for excess cost incurred in educating a child with a disability, as required in Section 22-20-109(6), C.R.S., the district of attendance, on behalf of the on-line program, may seek a determination from the State Board in accordance with the following provisions:

7.08(3)(a)(i) If the district of attendance determines that the district of residence has not forwarded to the on-line program the amount due to the on-line program in

accordance with the terms of the tuition contract and the provisions of these Rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. A district of attendance that chooses to request a determination of the issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the on-line program and/or the district of attendance to complete any requirements prior to seeking a determination from the department, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the on-line program and/or the district of attendance completes said requirements.

- 7.08(3)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence improperly withheld any portion of the amount due to the on-line program, the State Board shall direct the Department to review the terms of the tuition contract and other relevant information of the on-line program, and the Department shall make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. The Department shall request from the district of residence, the district of attendance and the on-line program, all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence, the district of attendance and the on-line program.

7.08(3)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the on-line program, the district of residence shall pay to the on-line program, within thirty days after issuance of the decision, the amount improperly withheld.

7.08(3)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the on-line program may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the on-line program.

7.08(3)(a)(v) Third party facilitation  
  
The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

7.08(3)(b) The dispute resolution procedure established in 7.08(3)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the on-line program, or who otherwise has not been attending the on-line program, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

## **2220-R-8.00**

## **GIFTED AND TALENTED STUDENT PROGRAMMING**

### **8.01**

### **Definitions**

8.01(1) “Gifted and talented children” means those persons between the ages of five and twenty-one whose abilities, talents, and potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational needs. Children under five who fit this definition may also be served. Gifted and talented children hereinafter are referred to as students. Gifted and talented students are capable of high performance, exceptional production, or exceptional learning behavior by virtue of any or a combination of these areas:

8.01(1)(a) General or specific intellectual ability.

8.01(1)(b) Specific academic aptitude.

8.01(1)(c) Creative or productive thinking.

8.01(1)(d) Leadership and human relations abilities.

8.01(1)(e) Visual arts, performing arts, spatial or musical abilities.

8.01(1)(f) Psychomotor abilities.

8.01(2) “Learning-related affective development” means programming intended to assist gifted and talented students in understanding themselves as gifted learners and the implications of their abilities, talents, and potential for accomplishment.

## **8.02 The Plan**

In order to be eligible for funding under these Rules, an administrative unit shall submit a plan for educating gifted and talented students to the Department on an annual basis. Filing of the plan shall constitute application for funding. Plans must be filed by May 31 of the fiscal year prior to the funding year. The Department will review all plans for completeness and thoroughness. A plan shall be deemed complete if it contains all elements specified in Section 8.02(1)(a) through 8.02(1)(f) of these Rules. A plan shall be deemed thorough if it meets the criteria described in the elements outlined in 8.02(1)(a) through 8.02(1)(f) of these Rules.

8.02(1) Elements of the plan. A plan for the education of gifted and talented students submitted to the department for funding purposes shall contain the following elements:

8.02(1)(a) Definition of “gifted and talented student”. The plan shall include a written definition that is the same as or substantially similar to the definition of “gifted and talented student” specified in section 8.01(1) of these Rules. This definition shall provide the basis for all other elements described in the plan.

- 8.02(1)(b) Identification procedure. The plan shall define the procedure used by the administrative unit for identifying students who fit the definition specified in section 8.02(1)(a) and for identifying the educational needs of these students. Such identification procedures shall include, but not necessarily be limited to, 1) the means by which parents are made aware of gifted education and the identification process available in the district and schools; and 2) efforts the district will make to identify gifted and talented students from traditionally under-served populations of students, including minority students, economically disadvantaged students, culturally different students, students with Limited English Proficiency, and students with disabilities.
- 8.02(1)(c) Programming. The plan shall describe the programming services, options, and strategies that will most commonly be implemented by the administrative unit and schools to appropriately address the educational needs of gifted and talented students. Such services, options, and strategies should include, but not necessarily be limited to, appropriate advanced/accelerated adaptations to the regular curriculum, advanced enrichment, learning-related affective needs programming, and career and future education guidance and counseling.
- 8.02(1)(d) Evaluation and Accountability. The plan shall describe 1) methods to be used for assessing and evaluating gifted and talented students' academic and/or affective growth, gain, and/or progress as a result of programming utilized; and 2) the methods for reporting such results to parents.
- 8.02(1)(e) Personnel. The plan shall describe the personnel who provide direct and/or indirect instructional and programming services for gifted and talented students. These personnel should possess appropriate knowledge and competencies in the special education of gifted and talented students. The plan shall also indicate the means by which the administrative unit supports the acquisition and/or improvement of the knowledge and competencies of these and other personnel through appropriate staff development relating to the education of gifted and talented students.
- 8.02(1)(f) Budget. The plan shall propose a budget for gifted and talented education which reflects the cost of implementing the plan. The budget shall include a combination of funding committed by the administrative unit and funding requested from the Department. Funding committed by the administrative unit shall be equal to or greater than the

amount requested from the Department. Funds requested from the Department may be used for:

- 8.02(1)(f)(i) salaries for certified, endorsed, or licensed personnel working with gifted and talented students;
- 8.02(1)(f)(ii) staff development and training relating to gifted and talented education;
- 8.02(1)(f)(iii) activities associated with gifted and talented education;
- 8.02(1)(f)(iv) supplies and materials used in instructional programming for gifted and talented education;
- 8.02(1)(f)(v) equipment necessary for the education of gifted and talented students, not to exceed twenty-five percent of the total amount requested from the Department.

### **8.03 Reports**

Any administrative unit receiving funding under the provision of these Rules shall submit to the Department by September 30 of each year a year-end report including:

- 8.03(1) a statement of financial income and expenditures;
- 8.03(2) the number of students served through gifted and talented student programming;
- 8.03(3) the percent of students in the district who have been identified as gifted and talented through a formal identification procedure;
- 8.03(4) the types of programming strategies utilized most commonly at each school level to address the needs of gifted and talented students; and
- 8.03(5) the methods used to determine commensurate educational growth for gifted students given the programming strategies applied.

### **8.04 Audits**

All programs receiving funding under the provisions of the Exceptional Children's Educational Act are subject to periodic audits by authorized representatives of the legislative and executive branches of state government. Fiscal audits shall be conducted in accordance with generally accepted auditing standards and accounting principles, as described in the Financial Policies and Procedures Handbook, published by the Department of Education pursuant to 22-44-204(3), C.R.S.

## **8.05 Record Keeping**

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

### **8.05(1) Financial Records**

Financial records shall be kept in accordance with generally accepted principles of governmental accounting. Recommended accounting principles are listed in the Financial Policies and Procedures Handbook. These procedures should be followed to the extent applicable.

### **8.05(2) Inventory**

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

### **8.05(3) Student Records/Confidentiality**

8.05(3)(a) A record of gifted and talented education programming services, options, and strategies utilized with individual students shall be made part of the student's record and shall be considered in educational planning and decision-making concerning subsequent programming for that student.

8.05(3)(b) Individually identifiable records of students referred, assessed, evaluated, and/or served through programming for gifted and talented students in any administrative unit shall be held to be confidential and protected in accordance with applicable federal and state laws and regulations.

### **8.05(4) Record Retention**

Unless otherwise governed by law, the record retention period shall be three years.