

Department of Education  
Colorado State Board of Education

1 Colorado Code of Regulations 301-8

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

The official version of the ECEA Rules, 1 CCR 301-8, 2220-R-1.00, et seq., can be found on the Colorado Secretary of State's Website at: <http://www.sos.state.co.us/CCR/>

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

1.00 (16) The statutory authority for the amendments to these Rules is found in Title 22, Article 2, Sections 406 and 407, which amended the law regarding facility schools; Title 22, Article 20, Section 103, which modifies the terminology and definitions relevant to facility schools and establishes the definition of "administrative unit"; and Title 22, Article 20, Section 108. The purpose of these amendments is to update the Rules to make them consistent with the law and Rules regarding facility schools, to clarify the definition of "administrative unit" to make it consistent with statute, to eliminate expired and outdated rules regarding special education due process hearings, and to comply with HB12-1345 which eliminated the "Preschooler with a Disability" eligibility category and charged the Department with promulgating a new eligibility category definition and criteria entitled "Child with a Developmental Delay".

**2220-R-2.00**

**DEFINITIONS USED IN THESE RULES**

**[2.01 NO CHANGE]**

**2.02 Administrative Unit**

*Administrative Unit (AU)* means a school district, board of cooperative services, ~~a multi-district consortium approved by the Department prior to January 1, 2011~~, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for the local administration of these Rules. In order to qualify as an administrative unit, school districts and boards of cooperative services shall meet all minimum standards established in Section 3.01 of these Rules. The Charter School Institute shall meet all minimum standards established in Section 3.01 of these Rules. All administrative units shall be approved by the Department of Education.

**2.02 (1) Administrative unit of residence.**

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

- 2.02 (1) (a) If a child with a disability is living at one of the regional centers, an approved facility school, a mental health institute operated by the Department of Human Services, or if the child attends the Colorado School for the Deaf and the Blind, such child shall be deemed to reside where the parent or guardian of such child resides.
- 2.02 (1) (b) If a child has been placed by a Colorado public agency and lives in one of the regional centers, a mental health institute, a facility, or a group home, and the administrative unit of residence cannot be determined because parental rights have been relinquished by the parents or terminated by a court, the parents are incarcerated, cannot be located, reside out of state, are deceased, or the child is legally emancipated, the child shall be considered a resident of the administrative unit in which the regional center, mental health institute, facility or group home is located.

[2.02(1)(c)-(h) NO CHANGE]

[2.02(2) NO CHANGE]

[2.03 – 2.07 NO CHANGE]

## 2.08 Children with Disabilities

*Children with Disabilities* shall mean those persons from three to twenty-one years of age who, by reason of one or more of the following conditions, are unable to receive reasonable benefit from general education. A child shall not be determined to have a disability if the determinant factor for that determination is: lack of appropriate instruction in reading or math or limited English proficiency; and if the child does not otherwise meet the eligibility criteria under this Section 2.08. A child upon reaching his/her third birthday becomes eligible for services as of that date. A child reaching the age of 21 after the commencement of the academic year has the right to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first. In such a case, the child is not entitled to extended school year services during the summer following such current academic year. If it is determined, through an appropriate evaluation, under Section 4.02(4) of these Rules, that a child has one of the following disabilities but only needs a related service (as defined in Section 2.37 of these Rules) and not special education (as defined in Sections 2.43 and 2.51 of these Rules), then the child is not a child with a disability under these Rules. For purposes of Part C of IDEA Child Find activities, *Children with Disabilities* also means persons from birth to twenty-one years of age consistent with Section 22-20-103(5)(b), C.R.S.

[2.08(1) - 2.08(12) NO CHANGE]

~~2.08 (13) A Preschooler with a Disability is a child three through five years of age who is experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, which developmental delays prevent the child from receiving reasonable educational benefit from general education.~~

~~2.08 (13) (a) For children ages three through five efforts will be made to identify a child's primary disability under one of the other Part B eligibility criteria. A child shall be determined to be eligible under the Preschooler with a Disability category only in those situations in which a clear determination cannot be made under any other category as measured by developmentally appropriate diagnostic instruments and procedures. In order for a child to be deemed a Preschooler with a Disability, multiple sources of information must be used to determine if a child meets one or more of the following criteria:~~

~~2.08 (13) (a) (i) A score in the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (75 if the mean is 100 and the standard deviation is 15) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: physical development, cognitive development, communication development, social or emotional development, or adaptive development as one of the multiple sources of evaluation information.~~

~~2.08 (13) (a) (ii) Empirical data showing a condition known to be associated with significant delays in development.~~

~~2.08 (13) (a) (iii) A body of evidence indicating that the child's patterns of learning are significantly different from age expectations across settings and written documentation by the evaluation team, including the parent(s).~~

~~2.08 (13) (b) For a child who is identified as a Preschooler with a Disability but then turns six years of age after December 1<sup>st</sup> and prior to the next regularly scheduled IEP meeting, an Administrative Unit may wait until the regularly scheduled IEP meeting to change the child's eligibility category.~~

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

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

2.08 (13) (a) (i) A score in the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (75 if the mean is 100 and the standard deviation is 15) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: physical development, cognitive development, communication development, social or emotional development, or adaptive development as one of the multiple sources of evaluation information;

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

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

[2.08(14) NO CHANGE]

[2.09- 2.13 NO CHANGE]

**2.14 — Eligible Facility**

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

~~2.14 (1) Approved facility school means an educational program that is operated by a facility to provide educational services to students placed in the facility, including special education services to children with disabilities, and that has been placed, pursuant to section 22-2-407, C.R.S., on the list of facility schools that are approved to receive reimbursement for providing those educational services. An educational program provided by an administrative unit at a facility is not an approved facility school, but rather is an educational program of the administrative unit that does not require approval by the Department.~~

## **2.1514 Equipment**

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

## **2.1615 ESEA**

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

## **2.1716 Evaluation**

2.1716(1) For purposes of Part B of IDEA, the term “*Evaluation*” means procedures used in accordance with Section 4.02(2) of these Rules, to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

2.1716(2) For purposes of Part C Child Find of IDEA, the term “*Evaluation*” means procedures used to determine a child’s initial and continuing eligibility for Part C Child Find, including but not limited to:

2.1716(2) (a) Determining the status of the child in each of the developmental areas;

2.1716(2) (b) Identifying the child’s unique strengths and needs;

2.1716(2) (c) Identifying any early intervention services that might serve the child’s needs; and

2.1716(2) (d) Identifying priorities and concerns of the family and resources to which the family has access.

## **2.1817 Excess Costs**

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

2.1817(1) Amounts received:

2.1817(1) (a) Under Part B of the Act;

2.1817(1) (b) Under Part A of Title I of the ESEA; and

2.1817(1) (c) Under Parts A and B of Title III of the ESEA and;

- 2.~~48~~17 (2) Any state or local funds expended for programs that would qualify for assistance under any of the Parts described in paragraph (1) of this Section, but excluding any amounts for capital outlay or debt service. (See Appendix A of 34 CFR Part 300 for an example of how excess costs must be calculated.)
- 2.~~48~~17 (3) This definition for “Excess Costs” is different from the term “Tuition Costs” as defined in Section 9.00 of these Rules.

## **2.18 Facility**

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

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

**[2.19 NO CHANGE]**

## **2.20 Highly Qualified Special Education Teachers**

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

**[2.21 – 2.53 NO CHANGE]**

## **2220-R-3.00**

### **ADMINISTRATION**

**[3.01 – NO CHANGE]**

## **3.02 Standards for Approved Facility Schools and State Operated Programs**

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

~~3.02 (1) (a) Minimum standards for special education approved facility schools.~~

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

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

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

- ~~3.02 (1) (a) (iii) In the case of Day Treatment programs, placements must be due to the child being considered at risk for out of home placement.~~
- ~~3.02 (1) (a) (iv) The education of the children in placement at the eligible facility is the responsibility of the state or local education agency.~~
- ~~3.02 (1) (a) (v) The education of children in placement is not the responsibility of another Colorado State agency or entity.~~
- ~~3.02 (1) (a) (vi) Employment of sufficient qualified administrative, instructional and support staff to plan for and provide services for all children who are determined to have a disability.~~
- ~~3.02 (1) (a) (vii) Each eligible facility shall employ or contract in writing, on at least a part-time basis, for a Director of Special Education who meets the qualification standards established by Section 3.04(1)(d) of these Rules.~~
- ~~3.02 (1) (a) (viii) Development and implementation of an approved comprehensive plan including quality standards as set forth in guidelines developed by the Department of Education.~~
- ~~3.02 (1) (a) (ix) Agree to carry out the duties and responsibilities identified in Section 8.01(2) of these Rules.~~
- ~~3.02 (1) (b) Approval of facilities.~~
- ~~Any facility wishing to obtain state or federal funds to provide education services to children with disabilities shall be approved by the State Board of Education.~~
- ~~3.02 (1) (b) (i) Facilities wishing to establish an approved school program shall submit a letter of intent to the Department of Education, Special Education Services Unit, at least 90 days prior to the day on which the facility is to begin its on-grounds school.~~
- ~~3.02 (1) (b) (ii) Facilities wishing to establish an approved school program shall submit to the Department of Education a comprehensive plan 30 days prior to the submission of its application for approval to the State Board of Education.~~
- ~~3.02 (1) (b) (iii) If the Department of Education determines that the facility meets state requirements as defined in Section 3.02(1) of these Rules, the Department shall notify the facility that it is being recommended to the State Board of Education for approval. If the Department of Education determines that the eligible facility is unable to meet requirements as defined in Section 3.02(1) of these Rules, it shall present its reasons for such findings in writing.~~
- ~~3.02 (1) (b) (iv) If within 30 days of the Department's disapproval, the facility is unable to negotiate a satisfactory resolution of differences with the Department of Education, it may utilize standard appeal procedures in accordance with Section 7.07 of these Rules.~~
- ~~3.02 (1) (c) Maintenance of approved status.~~
- ~~3.02 (1) (c) (i) In order to maintain approval of its school program, each facility shall:~~

~~3.02 (1) (c) (i) (A) Comply with required policies and procedures as set forth in these Rules.~~

~~3.02 (1) (c) (i) (B) Complete an annual self-assessment based on the Quality Standards for Eligible Facilities and develop a school improvement plan.~~

~~3.02 (1) (c) (i) (C) Notify the Colorado Department of Education, Exceptional Student Leadership Unit, in writing in the event that:~~

~~3.02 (1) (c) (i) (C) (I) The management or administration of the facility changes,~~

~~3.02 (1) (c) (i) (C) (II) The facility is purchased by or merged with another agency, or~~

~~3.02 (1) (c) (i) (C) (III) There is a change of educational coordinator.~~

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

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

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

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

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

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

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

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

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

~~3.02 (1) (e) Comprehensive plan.~~

~~Each facility seeking approval for an on-grounds school shall develop a comprehensive plan in which are stated the policies and procedures to be followed in order to be in compliance with all applicable state laws and regulations. At a minimum, the comprehensive plan shall include but not be limited to the following:~~

~~3.02 (1) (e) (i) An explanation of the purpose of the eligible facility, especially as it relates to treatment, care and education of children with disabilities.~~

~~3.02 (1) (e) (ii) A description of the population to be served by the facility.~~

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

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

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

~~3.02 (1) (f) Revocation of Approved Status.~~

~~Approved facility schools 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 approved facility schools 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) NO CHANGE]

[3.03 NO CHANGE]

### 3.04 Personnel Qualifications

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

3.04 (1) Personnel qualifications.

3.04 (1) (a) Teachers

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

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

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

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

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

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

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

3.04 (1) (b) Related services personnel.

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

- 3.04 (1) (c) Special education coordinators.
- Special education coordinators shall have at least a Bachelor's degree and certification and/or licensure in a relevant field. Documentation of their expertise shall be submitted to the Department of Education.
- 3.04 (1) (d) Administrators.
- Special education directors and assistant directors must possess a certificate or administrator's license with appropriate endorsement.
- 3.04 (1) (e) Paraprofessionals.
- Each administrative unit or ~~eligible facility~~ approved facility school will determine the qualifications and competencies required for paraprofessionals. Administrative units and ~~eligible facilities~~ approved facility schools 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~~ approved facility school on a full-time or part-time basis shall meet the following minimum standards, and documentation for meeting these standards must be renewed every five years:
- 3.04 (1) (f) (i) Demonstration of a rating of 3.5 (average) or better in the four areas of the Educational Interpreter Performance Assessment (EIPA).
- 3.04 (1) (f) (ii) Documented content knowledge in these areas: child development, language development, curriculum, teaching and tutoring methods, deafness and the educational process for deaf children.
- The Colorado Department of Education will provide guidelines for the implementation of these minimum standards.
- 3.04 (2) Temporary Teacher Eligibility (TTE).
- If an administrative unit or ~~eligible facility~~ approved facility school 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~~ approved facility school.

- 3.04 (2) (c) No later than 90 days after employment, the administrative unit or ~~eligible facility~~ approved facility school 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~~ approved facility school 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~~ approved facility school to another, the second unit or ~~eligible facility~~ approved facility school 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~~ approved facility school 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~~ approved facility schools shall provide for staff development to assure opportunities for appropriate educational services to children with disabilities.

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

### 3.06 Program Evaluation

Each administrative unit or ~~eligible facility~~ approved facility school shall maintain records of results of all qualitative and quantitative evaluations of special education services rendered. Evaluations of

special education services shall occur annually and within a period of five years systematically cover aspects of services to children with disabilities. Such evaluations shall review:

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

## 2220-R-4.00

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

#### [4.01 – 4.02 NO CHANGE]

#### 4.03 Individualized Education Programs

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

#### [4.03(1) – (3) NO CHANGE]

- 4.03 (4) Responsibility for IEP Meetings.

The relative responsibilities of administrative units, state-operated programs and ~~eligible facilities~~ approved facility schools for IEP development, review and revision are established in Rule 8.00.

- 4.03 (5) Participants in meetings.

Except as is otherwise provided for in this Section 4.03(5), the IEP Team requirements contained in 34 CFR §300.321 shall apply in their entirety to meetings held for the development of an initial IEP or for the review of an IEP.

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

- 4.03 (6) Content of IEP/Record of Meeting.

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

[4.03(6)(a) – (b) NO CHANGE]

- 4.03 (6) (c) Academic Content Standards
- 4.03 (6) (c) (i) The IEP for a child enrolled in a school district or the State Charter School Institute shall specify:
  - 4.03 (6) (c) (i) (A) Whether the child shall achieve the content standards adopted by the district in which the child is enrolled or by the State Charter School Institute; or
  - 4.03 (6) (c) (i) (B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP:
- 4.03 (6) (c) (ii) For each child attending school in an ~~eligible facility~~ approved facility school or state-operated program, the IEP shall specify:
  - 4.03 (6) (c) (ii) (A) Whether the child shall achieve State or local content standards; or
  - 4.03 (6) (c) (ii) (B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP.

[4.03(6) (d) – (f) NO CHANGES]

[4.03(7) NO CHANGE]

- 4.03 (8) The requirements for parent involvement in educational placement decisions shall be consistent with 34 CFR §300.327 and §300.501(c).
- 4.03 (8) (a) The determination of placement must be based on the child’s IEP and made by the IEP Team. The terms “placement” or “educational placement” are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child’s IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee.
- 4.03 (8) (b) Change in placement.
  - 4.03 (8) (b) (i) Nonsignificant change in program/services.

When a child’s educational program is altered, such as a change in the amount of a given service, the change in program/services is a nonsignificant change in program/services.
  - 4.03 (8) (b) (i) (A) Prior written notice of such changes must be provided to the parent.
  - 4.03 (8) (b) (i) (B) Consent is not required.
  - 4.03 (8) (b) (i) (C) A non-significant change in program/services must be made by the IEP Team unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual

IEP meeting in a school year consistent with 34 CFR §300.324(a)(4). However, reevaluation is not required.

4.03 (8) (b) (ii) Significant change in placement:

4.03 (8) (b) (ii) (A) A significant change in placement for educational purposes includes placement or referral to a private school or ~~eligible facility~~ approved facility school by the administrative unit, the addition or termination of an instructional or related service or any change which would result in the following:

[4.03(8)(b)(ii)(A)(I)-(III) NO CHANGE]

[4.03(8)(b)(ii)(B) NO CHANGE]

[4.03(8)(b)(iii) – (iv) NO CHANGE]

[4.03(8)(c) NO CHANGE]

[4.03(9) – (11) NO CHANGE]

## **2220-R-5.00**

### **REQUIREMENTS FOR FUNDING ELIGIBILITY**

#### **5.01 State Eligibility**

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

[5.01(1) – (7) NO CHANGE]

5.01 (8) Requirements regarding children with disabilities placed in or referred to private schools or ~~facilities~~ approved facility schools by an administrative unit or a state-operated program as means of providing special education services as established by 34 CFR §300.145 through §300.147.

[5.01(9) – (24) NO CHANGE]

[5.02 – 5.04 NO CHANGE]

## **2220-R-6.00**

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

[6.01 NO CHANGE]

#### **6.02 Procedural Safeguards and Due Process Procedures for Parents and Children**

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

[6.02(1) – (6) NO CHANGE]

6.02 (7) ~~[Repealed] Due Process Complaints and Appeals~~

~~This Rule 6.02(7) remains in effect for all due process complaints filed on or before June 30, 2011.~~

~~6.02 (7) (a) General.~~

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

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

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

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

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

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

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

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

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

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

~~6.02 (7) (b) (iv) Under no circumstance may the party receiving a due process complaint unilaterally determine that the due process complaint is insufficient or that it fails to state a claim under federal or state special education law. A notice of~~

~~insufficiency may be presented to the impartial hearing officer pursuant to 34 CFR §300.508(d).~~

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

~~The Department shall assign an impartial hearing officer from the registry of impartial hearing officers on a rotating basis, depending on availability, within two business days after the Department's receipt of a due process complaint.~~

~~6.02 (7) (d) Timelines applicable to resolution meetings and mediation.~~

~~6.02 (7) (d) (i) Resolution Meeting~~

~~6.02 (7) (d) (i) (A) Within 15 days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing, the administrative unit or state-operated program must convene a resolution meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—~~

~~6.02 (7) (d) (i) (A) (I) Includes a representative of the administrative unit or state-operated program who has decision-making authority on behalf of that agency; and~~

~~6.02 (7) (d) (i) (A) (II) May not include an attorney of the administrative unit or state-operated program unless the parent is accompanied by an attorney.~~

~~6.02 (7) (d) (i) (B) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the administrative unit or state-operated program has the opportunity to resolve the dispute that is the basis for the due process complaint.~~

~~6.02 (7) (d) (i) (C) The resolution meeting described need not be held if—~~

~~6.02 (7) (d) (i) (C) (I) The parent and the administrative unit or state-operated program agree in writing to waive the resolution meeting; or~~

~~6.02 (7) (d) (i) (C) (II) The parent and the administrative unit or state-operated program agree to use the mediation process described in 34 CFR §300.506 and Section 6.02(6) of these Rules.~~

~~6.02 (7) (d) (i) (D) The parent and the administrative unit or state-operated program determine the relevant members of the IEP Team to attend the resolution meeting.~~

~~6.02 (7) (d) (ii) Resolution Period~~

~~6.02 (7) (d) (ii) (A) If the administrative unit or state-operated program has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.~~

- ~~6.02 (7) (d) (ii) (B) Except as provided in Section 6.02(7)(d)(ii)(C), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period.~~
- ~~6.02 (7) (d) (ii) (C) Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.~~
- ~~6.02 (7) (d) (ii) (D) If the administrative unit or state-operated program is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (using the procedures in 34 CFR §300.322(d)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the impartial hearing officer dismiss the parent's due process complaint.~~
- ~~6.02 (7) (d) (ii) (E) If the administrative unit or state-operated program fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the impartial hearing officer to begin the due process hearing 45-day timeline.~~
- ~~6.02 (7) (d) (iii) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events:~~
- ~~6.02 (7) (d) (iii) (A) Both parties agree in writing to waive the resolution meeting;~~
- ~~6.02 (7) (d) (iii) (B) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;~~
- ~~6.02 (7) (d) (iii) (C) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the administrative unit or state-operated program withdraws from the mediation process.~~
- ~~6.02 (7) (e) Timelines applicable to due process hearings and convenience of hearings.~~
- ~~6.02 (7) (e) (i) The administrative unit or state-operated program must ensure that not later than 45 days after the expiration of the 30-day resolution period, or the adjusted time periods described in Section 6.02(7)(d)(iii), above—~~
- ~~6.02 (7) (e) (i) (A) A final decision is reached in the hearing; and~~
- ~~6.02 (7) (e) (i) (B) A copy of the decision is mailed to each of the parties.~~
- ~~6.02 (7) (e) (ii) At the request of either party, the impartial hearing officer may grant specific extensions of time beyond the 45-day due process hearing period, or the adjusted time periods described in Section 6.02(7)(d)(iii), above. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7)(f)(v), below.~~
- ~~6.02 (7) (e) (iii) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.~~
- ~~6.02 (7) (f) Conduct of due process hearings~~

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

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

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

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

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

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

~~The hearing officer shall:~~

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

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

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

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

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

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

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

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

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

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

~~6.02 (7) (f) (v) (D) Exception. In the case of an expedited due process hearing requested as a result of a disciplinary change of placement pursuant~~

~~to 34 CFR § 300.532(c), the timelines established in Section 6.02(7)(i)(ii), below, shall apply.~~

~~6.02 (7) (g) Hearing Rights~~

~~Generally, hearing rights accorded to parties shall be consistent with 34 CFR §300.512.~~

~~6.02 (7) (h) Hearing Decisions~~

~~6.02 (7) (h) (i) General. Due process hearing decisions shall be consistent with the requirements established by 34 CFR §300.513. The topics addressed by 34 CFR §300.513 include:~~

~~6.02 (7) (h) (i) (A) The decision of the hearing officer on the provision of FAPE;~~

~~6.02 (7) (h) (i) (B) Separate request for a due process hearing; and~~

~~6.02 (7) (h) (i) (C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.~~

~~6.02 (7) (h) (ii) Specific requirements for due process decisions.~~

~~6.02 (7) (h) (ii) (A) The impartial hearing officer shall render, in writing, all findings of fact and the decision based upon the evidence.~~

~~6.02 (7) (h) (ii) (B) The hearing officer shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7)(i)(ii).~~

~~6.02 (7) (h) (ii) (C) The hearing officer shall include with the decision mailed to the parties a copy of Section 6.02(7)(j) of these Rules regarding state level review (i.e., appeal) of the decision.~~

~~6.02 (7) (h) (ii) (D) Except for the caption of the case, the decision shall be written such that it does not disclose personally identifiable information of the child or the parent(s).~~

~~6.02 (7) (h) (ii) (E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the tape recording of the hearing, if available. The record shall be forwarded to the department within 45 days after the conclusion of all proceedings if no appeal is taken.~~

~~6.02 (7) (i) Expedited Due Process Hearings~~

~~6.02 (7) (i) (i) General.~~

~~Consistent with 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an administrative unit or state-operated program that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing, and must have the opportunity for an expedited hearing. The~~

~~requirements for expedited due process hearings, including timelines, shall be in accordance with 34 CFR §300.532.~~

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

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

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

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

~~6.02 (7) (i) (ii) (B) (II) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.~~

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

~~6.02 (7) (j) Appeals~~

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

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

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

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

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

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

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

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

- ~~6.02 (7) (j) (ii) (A) (II) A designation of the transcript. A party may designate a portion of the tape recorded record or arrange for a transcript of the tape recorded record.~~
- ~~6.02 (7) (j) (ii) (B) Simultaneously with mailing or filing the notice of appeal and designation of transcript with the Office of Administrative Courts, the appealing party shall mail copies of these documents to the Department and to all other parties in the proceeding before the impartial hearing officer at their last known addresses.~~
- ~~Within five days of receipt of a notice of appeal, any other party may file a cross appeal.~~
- ~~6.02 (7) (j) (ii) (C) The notice of appeal shall contain the following:~~
- ~~6.02 (7) (j) (ii) (C) (I) The caption of the case, including case number and names of all parties.~~
- ~~6.02 (7) (j) (ii) (C) (II) The party or parties initiating the appeal.~~
- ~~6.02 (7) (j) (ii) (C) (III) A brief description of the nature of the case and the order being appealed.~~
- ~~6.02 (7) (j) (ii) (C) (IV) A list of the issues to be raised on appeal.~~
- ~~6.02 (7) (j) (ii) (C) (V) A copy of the findings of fact and decision of the impartial hearing officer being appealed.~~
- ~~6.02 (7) (j) (ii) (C) (VI) A certificate of service showing the date that the copy of the notice of appeal was mailed to the Department and to all parties in the proceeding before the impartial hearing officer. All subsequent documents and pleadings filed with the Office of Administrative Courts shall similarly contain a certificate of service showing that a copy was mailed to all parties.~~
- ~~6.02 (7) (j) (ii) (D) A notice of cross appeal shall contain those items listed in Section 6.02(7)(j)(ii)(C) of these Rules, along with a certificate of service.~~
- ~~6.02 (7) (j) (ii) (E) At the time that the notice of appeal is filed or mailed, the appealing party shall also file with or mail to the Office of Administrative Courts a statement that no transcript is necessary for the appeal and a review of the tape recorded record is sufficient; or a designation of all portions of the transcript necessary for resolution of the appeal. No transcript is required if the issues on appeal are limited to pure questions of law.~~
- ~~6.02 (7) (j) (ii) (F) Within five days after the receipt of the notice of appeal and designation of transcript or tape recording, the other party may file with the Office of Administrative Courts a designation of any additional portions of the transcript which the party believes are necessary for resolution of the appeal.~~
- ~~6.02 (7) (j) (ii) (G) Whichever party appeals the decision shall insure that such transcript is filed with the Office of Administrative Courts within 15 days of the date the notice of appeal is mailed or filed.~~

- ~~6.02 (7) (j) (ii) (G) (I) — Whichever party appeals the decision shall, simultaneously with filing or mailing the notice of appeal and designation of record, contact the court reporter and order the transcript or arrange for the transcription of a tape recorded record or submit the entire tape recorded record.~~
- ~~6.02 (7) (j) (ii) (G) (II) — Immediately upon filing any additional designations pursuant to Section 6.02(7)(j)(ii)(A)(II) of these Rules, any party submitting designations shall order from the court reporter the transcript or arrange for transcription in the case of a tape recorded record and shall insure that such transcript is filed with the Office of Administrative Courts within 15 days, or submit the entire tape recording.~~
- ~~6.02 (7) (j) (ii) (G) (III) — A party requesting a written transcript is responsible for paying for it. A party requesting parts of a written transcript by filing an additional designation is responsible to pay for those portions of the transcript. Parent(s) shall not be required to pay for the cost of a copy of the tape recorded record for an appeal. The transcript or portions thereof shall be made available to any party at reasonable times for inspection or copying at the copier's expense.~~
- ~~6.02 (7) (j) (ii) (H) — Upon receipt of the notice of appeal, the administrative law judge assigned to hear the appeal shall direct the impartial hearing officer to certify and transmit to the administrative law judge, within seven days, all pleadings and documents filed with the impartial hearing officer, all exhibits and the decision of the impartial hearing officer.~~
- ~~6.02 (7) (j) (iii) — State level review procedures.~~
- ~~6.02 (7) (j) (iii) (A) — Unless otherwise ordered by the administrative law judge, briefs shall be filed and oral argument held within 20 days after the filing or mailing of the notice of appeal.~~
- ~~6.02 (7) (j) (iii) (B) — In conducting a state level review, the administrative law judge shall:~~
- ~~6.02 (7) (j) (iii) (B) (I) — Examine the entire hearing record including the certified record received from the impartial hearing officer.~~
- ~~6.02 (7) (j) (iii) (B) (II) — Ensure that the procedures used at the due process hearing were consistent with the requirements of due process;~~
- ~~6.02 (7) (j) (iii) (B) (III) — Seek additional evidence, if necessary. If a hearing is held to receive evidence, the rights in 34 CFR §300.512 apply;~~
- ~~6.02 (7) (j) (iii) (B) (IV) — Afford the parties an opportunity for oral or written argument, or both, at the discretion of the administrative law judge. Each appeal involving an evidentiary hearing or oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.~~
- ~~6.02 (7) (j) (iii) (B) (V) — Make an independent decision and mail such to all parties within 30 days after the request for a review is received.~~
- ~~6.02 (7) (j) (iii) (B) (VI) — Prior to issuing the decision, the administrative law judge shall transmit a copy of the decision to the Department.~~

~~6.02 (7) (j) (iii) (B) (VII) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decision to the parties.~~

~~6.02 (7) (j) (iii) (C) The Department shall transmit the findings and decisions to the Colorado State Advisory Committee and the general public consistent with the requirements of 34 CFR §300.514(e).~~

~~6.02 (7) (j) (iii) (D) The decision made by the administrative law judge is final unless a party brings a civil action pursuant to 34 CFR §300.516 and Section 6.02(7)(k) of these Rules.~~

~~6.02 (7) (j) (iv) Timelines applicable to appeals and convenience of appeals.~~

~~The Department must ensure that not later than 30 days after the receipt of a timely appeal—~~

~~6.02 (7) (j) (iv) (A) A final decision is reached in the appeal; and~~

~~6.02 (7) (j) (iv) (B) A copy of the decision is mailed to each of the parties.~~

~~6.02 (7) (j) (v) Extension of appeal timelines. At the request of either party the administrative law judge may grant specific extensions of time beyond the 30 day appeal period for the issuance of a decision. Any such extension of time shall be made in accordance with Section 6.02(7)(j)(vi), below.~~

~~6.02 (7) (j) (vi) Extension of timelines~~

~~6.02 (7) (j) (vi) (A) Any request by a party to extend an appeal decision timeline shall be made within a reasonable period of time prior to the expiration of the 30-day appeal period or previously extended time period;~~

~~6.02 (7) (j) (vi) (B) The administrative law judge's decision regarding the requested extension of an appeal timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and~~

~~6.02 (7) (j) (vi) (C) The administrative law judge shall provide a copy of such written order to the parties and to the Department.~~

~~6.02 (7) (k) Civil Action.~~

~~Any party aggrieved by the findings and decision of the administrative law judge has the right to bring a civil action consistent with the requirements set forth in 34 CFR §300.516.~~

~~6.02 (7) (l) Attorneys' fees.~~

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

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

~~The child's status during the pendency of any administrative or judicial proceeding shall be governed by the requirements established by 34 CFR §300.518 unless the~~

~~due process complaint involves the disciplinary placement of the child, in which case 34 CFR §300.533 applies.~~

6.02 (7.5) Due Process Complaints and Civil Actions

~~This Rule 6.02(7.5) shall be effective for all due process complaints filed on or after July 1, 2011.~~

6.02 (7.5) (a) General.

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

6.02 (7.5) (a) (i) Procedures regarding the due process complaint, including the content of the due process complaint and filing requirements, shall be consistent with 34 CFR §300.507 and §300.508.

6.02 (7.5) (a) (ii) Consistent with 34 CFR §300.509, a parent or the administrative unit or state-operated program may use the model due process complaint form developed by the Department, or another form or other document, so long as the form or document that is used meets the due process complaint content requirements as set forth in 34 CFR §300.508(b).

6.02 (7.5) (a) (iii) Upon receipt of the first due process complaint filed by a parent in a school year, the Special Education Director of the administrative unit or state-operated program must provide the parent with a copy of the procedural safeguards notice available to parents consistent with 34 CFR §300.504.

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

6.02 (7.5) (b) (i) The party filing a due process complaint shall file a copy of the due process complaint with the Department at the same time that the due process complaint is filed with the opposing party to ensure that the Department timely assigns an Administrative Law Judge (ALJ) to the case.

6.02 (7.5) (b) (ii) If the party filing the complaint is a parent, the party shall file the due process complaint with the Special Education Director of the affected administrative unit or state-operated program.

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

6.02 (7.5) (b) (iv) Regardless of whether the administrative unit/state-operated program or the parent has initiated the due process complaint, when the Special Education Director of the administrative unit or state-operated program knows that a due process complaint has been filed, it is the responsibility of the Special Education Director to:

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

6.02 (7.5) (b) (iv) (B) By facsimile, immediately provide a complete copy of the due process complaint to the Department accompanied by a written statement documenting the date when the due process complaint was filed.

- 6.02 (7.5) (b) (v) Under no circumstance may the party receiving a due process complaint unilaterally determine that the due process complaint is insufficient or that it fails to state a claim under federal or state special education law. A notice of insufficiency may be presented to the ALJ pursuant to 34 CFR §300.508(d).
- 6.02 (7.5) (c) Assignment of an Administrative Law Judge.
- Within two business days after the Department's receipt of a due process complaint, the Department shall notify the Office of Administrative Courts (OAC) in order to have an ALJ assigned to the complaint.
- 6.02 (7.5) (d) Timelines applicable to resolution meetings and mediation.
- 6.02 (7.5) (d) (i) Resolution Meeting
- 6.02 (7.5) (d) (i) (A) Within 15 days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing, the administrative unit or state-operated program must convene a resolution meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—
- 6.02 (7.5) (d) (i) (A) (I) Includes a representative of the administrative unit or state-operated program who has decision-making authority on behalf of that agency; and
- 6.02 (7.5) (d) (i) (A) (II) May not include an attorney of the administrative unit or state-operated program unless the parent is accompanied by an attorney.
- 6.02 (7.5) (d) (i) (B) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the administrative unit or state-operated program has the opportunity to resolve the dispute that is the basis for the due process complaint.
- 6.02 (7.5) (d) (i) (C) The resolution meeting described need not be held if—
- 6.02 (7.5) (d) (i) (C) (I) The parent and the administrative unit or state-operated program agree in writing to waive the resolution meeting; or
- 6.02 (7.5) (d) (i) (C) (II) The parent and the administrative unit or state-operated program agree to use the mediation process described in 34 CFR §300.506 and Section 6.02(6) of these Rules.
- 6.02 (7.5) (d) (i) (D) The parent and the administrative unit or state-operated program determine the relevant members of the IEP Team to attend the resolution meeting.
- 6.02 (7.5) (d) (ii) Resolution Period
- 6.02 (7.5) (d) (ii) (A) The ALJ has no authority to extend the 30-day resolution period.
- 6.02 (7.5) (d) (ii) (B) The parties may extend the resolution period but only under the circumstances described in Section 6.02(7.5)(d)(iii)(C).

- 6.02 (7.5) (d) (ii) (C) If the administrative unit or state-operated program has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.
- 6.02 (7.5) (d) (ii) (D) Except as provided in Section 6.02(7.5)(d)(~~iii~~-(D)(iii)), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period.
- 6.02 (7.5) (d) (ii) (E) Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- 6.02 (7.5) (d) (ii) (F) If the administrative unit or state-operated program is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (using the procedures in 34 CFR §300.322(d)(1) through (3)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the ALJ dismiss the parent's due process complaint.
- 6.02 (7.5) (d) (ii) (G) If the administrative unit or state-operated program fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the ALJ to begin the due process hearing 45-day timeline.
- 6.02 (7.5) (d) (iii) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events:
- 6.02 (7.5) (d) (iii) (A) Both parties agree in writing to waive the resolution meeting;
- 6.02 (7.5) (d) (iii) (B) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
- 6.02 (7.5) (d) (iii) (C) When a party withdraws from mediation after the parties previously agreed, at the end of the 30-day resolution period, to continue the mediation as described below:
- 6.02 (7.5) (d) (iii) (C) (I) The parties' agreement to continue the mediation shall be in writing and signed by each party; and
- 6.02 (7.5) (d) (iii) (C) (II) Immediately after the parties' execution of the agreement to continue mediation, the parties shall jointly and simultaneously file the written agreement to continue mediation with the ALJ and the Department.
- 6.02 (7.5) (e) Timelines applicable to due process hearings and convenience of hearings.
- 6.02 (7.5) (e) (i) The Department must ensure that not later than 45 days after the expiration of the 30 day resolution period, or the adjusted time periods described in Section 6.02(7.5)(d)(iii), above—

- 6.02 (7.5) (e) (i) (A) A final decision is reached in the hearing; and
- 6.02 (7.5) (e) (i) (B) A copy of the decision is mailed to each of the parties.
- 6.02 (7.5) (e) (ii) At the request of either party, the ALJ may grant specific extensions of time beyond the 45 day due process hearing period. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7.5)(f)(v), below.
- 6.02 (7.5) (e) (iii) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.
- 6.02 (7.5) (f) Conduct of due process hearings
 

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

  - 6.02 (7.5) (f) (i) The qualifications of ALJs.
 

At a minimum, an ALJ must meet the qualifications established by 34 CFR §300.511(c). The Department, at its discretion, may require additional qualifications.
  - 6.02 (7.5) (f) (ii) The subject matter of due process hearings.
  - 6.02 (7.5) (f) (iii) The timeline and exceptions to the timeline for requesting a hearing.
  - 6.02 (7.5) (f) (iv) Specific procedures.
 

The ALJ shall:

    - 6.02 (7.5) (f) (iv) (A) Consistent with the timelines in Section 6.02(7.5)(e), above, establish the procedures and timelines to be followed during the hearing;
    - 6.02 (7.5) (f) (iv) (B) Schedule the time and place for the hearing;
    - 6.02 (7.5) (f) (iv) (C) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined;
    - 6.02 (7.5) (f) (iv) (D) At the request of either party, issue subpoenas to compel attendance of witnesses at the hearing;
    - 6.02 (7.5) (f) (iv) (E) Ensure that a written or electronic verbatim account of the hearing is kept; and
    - 6.02 (7.5) (f) (iv) (F) Provide to the Department a copy of any order or decision issued.
  - 6.02 (7.5) (f) (v) Extension of timelines
    - 6.02 (7.5) (f) (v) (A) The ALJ shall not have authority to extend the 45 day due process decision timeline until after the resolution period described in section 6.02(7.5)(d)(ii), above, has occurred.
    - 6.02 (7.5) (f) (v) (B) Any request by a party to extend a due process hearing decision timeline shall be made within a reasonable period of time prior to the expiration of the 45 day period or previously extended time period;

- 6.02 (7.5) (f) (v) (C) The ALJ's decision regarding the requested extension of a due process decision timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and
- 6.02 (7.5) (f) (v) (D) The ALJ shall provide a copy of such written order to the parties and to the Department.
- 6.02 (7.5) (f) (v) (E) Exception. In the case of an expedited due process hearing requested as a result of a disciplinary change of placement pursuant to 34 CFR § 300.532(c), the specific timelines established in Section 6.02(7.5)(i)(ii), below, shall apply.
- 6.02 (7.5) (g) Hearing Rights  
Hearing rights accorded to parties shall be consistent with 34 CFR §300.512.
- 6.02 (7.5) (h) Hearing Decisions
- 6.02 (7.5) (h) (i) General. Due process hearing decisions shall be consistent with the requirements established by 34 CFR §300.513. The topics addressed by 34 CFR §300.513 include:
  - 6.02 (7.5) (h) (i) (A) The decision of the ALJ on the provision of FAPE;
  - 6.02 (7.5) (h) (i) (B) Separate request for a due process hearing; and
  - 6.02 (7.5) (h) (i) (C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.
- 6.02 (7.5) (h) (ii) Specific requirements for due process decisions.
  - 6.02 (7.5) (h) (ii) (A) The ALJ shall render, in writing, all findings of fact and the decision based upon the evidence.
  - 6.02 (7.5) (h) (ii) (B) The ALJ shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7.5)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7.5)(i)(ii).
  - 6.02 (7.5) (h) (ii) (C) The ALJ shall include within the decision notification that, any party aggrieved by the findings and decision, has the right to bring a civil action consistent with the requirements as set forth in 34 CFR §300.516.
  - 6.02 (7.5) (h) (ii) (D) Except for the caption of the case, the decision shall be written such that it does not disclose personally identifiable information of the child or the parent(s).
  - 6.02 (7.5) (h) (ii) (E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the recording of the hearing, if available. The record shall be forwarded to the Department within 100 days after the conclusion of all due process proceedings if no civil action is brought.

6.02 (7.5) (i) Expedited Due Process Hearings

6.02 (7.5) (i) (i) General.

Consistent with 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an administrative unit or state-operated program that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing, and must have the opportunity for an expedited hearing. The requirements for expedited due process hearings, including timelines, shall be in accordance with 34 CFR §300.532.

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

6.02 (7.5) (i) (ii) (A) The Department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The ALJ must make a determination within 10 school days after the hearing.

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

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

6.02 (7.5) (i) (ii) (B) (II) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

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

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

6.02 (7.5) (i) (iii) The requirements and procedures contained in this Section 6.02(7.5)(a) through 6.02(7.5)(h) shall apply to expedited due process hearings to the extent that such requirements and procedures are not in conflict with 34 CFR §300.532.

6.02 (7.5) (j) Civil Action.

Any party aggrieved by the findings and decision of the administrative law judge has the right to bring a civil action consistent with the requirements set forth in 34 CFR §300.516.

6.02 (7.5) (k) Attorneys' fees.

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

6.02 (7.5) (l) Child's status during proceedings

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

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

[6.02(8)(a) – (j) NO CHANGE]

6.02 (8) (k) ~~Eligible Facilities~~ Approved Facility Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an eligible facility approved facility school needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the eligible facility approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the eligible facility is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.

[6.02(9) – (10) NO CHANGE]

**COORDINATION BETWEEN SEA AND LEAs**

**7.01 Record Keeping**

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

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

- 7.01 (1) (c) Individually identifiable information shall be held confidential and protected in accordance with Section 6.01 of these Rules.
- 7.01 (1) (d) Destruction of records shall be in compliance with Section 6.01(14) of these Rules and 34 CFR §300.624.
- 7.01 (2) Staff data.  
Administrative units should maintain the following data for all special education services staff:
  - 7.01 (2) (a) Name.
  - 7.01 (2) (b) Special education position assignment.
  - 7.01 (2) (c) FTE and salary attributable to special education, and source of funds supporting that salary.
  - 7.01 (2) (d) Documentation of time spent with students with disabilities for each staff member who is employed part-time in special education and part-time in regular education.
- 7.01 (3) Revenue and expenditure data.
  - 7.01 (3) (a) Administrative units shall maintain auditable records of all special education expenditures and of the state, federal, local and other revenues which are received in support of those expenditures.
  - 7.01 (3) (b) Using the accrual basis of accounting, administrative units shall operate a budgeting and accounting procedure which records the objects of expenditure for each special education instructional and support service area.
  - 7.01 (3) (c) Community centered boards and ~~eligible facilities~~ approved facility schools shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

**[7.02 – 7.04 NO CHANGE]**

**7.05 Monitoring**

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

- 7.05 (1) Each administrative unit, State Operated Program or ~~eligible facility~~ approved facility school shall be subject to ongoing monitoring by the Department of Education of its policies, procedures and practices relating to the identification and/or education of children with disabilities.
  - 7.05 (1) (a) Monitoring procedures shall include:
    - 7.05 (1) (a) (i) A determination of compliance with statutes according to the administrative unit on-site checklist developed by the Department of Education.
    - 7.05 (1) (a) (ii) An assessment of program quality based on the standards established by the Department of Education.

- 7.05 (1) (b) Monitoring activities shall be determined by the Department of Education and shall include:
- 7.05 (1) (b) (i) Review of the comprehensive plan of the administrative unit, state-operated program or ~~eligible facility~~ approved facility school,
- 7.05 (1) (b) (ii) A review of the data routinely collected by the Department of Education,
- 7.05 (1) (b) (iii) A planned comprehensive or targeted on-site process to identify and verify compliance with and implementation of policies and procedures as well as delivery of services,
- 7.05 (1) (b) (iv) Count audits consisting of periodic checks of student eligibility criteria through verification of documentation as found in students' files and on individual education programs.
- 7.05 (1) (c) Follow-up to assure non-compliance issues have been rectified shall be ongoing. Follow-up of non compliance issues identified from the count audits will occur as part of the comprehensive on-site monitoring process.
- 7.05 (2) Within 90 days from the completion of any monitoring procedure or activity, the Department of Education shall provide a written report based on the administrative unit on-site checklist, to the administrative unit, state-operated program or ~~eligible facility~~ approved facility school which shall include findings, non-compliance items, directives for corrective action, and recommendations for improvement.
- 7.05 (2) (a) Should the Department of Education determine that an administrative unit, state-operated program or ~~eligible facility~~ approved facility school is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such administrative unit, state-operated program or ~~eligible facility~~ approved facility school with the legal citation of the statute or regulation it is found to have violated and the directive for corrective action or request for a corrective action plan.
- 7.05 (2) (b) Should the Department of Education determine that an administrative unit, state-operated program or ~~eligible facility~~ approved facility school does not reasonably satisfy quality standards or guidelines established by the Department of Education, recommendations will be made.
- 7.05 (3) Within 90 days following any report of non-compliance, the administrative unit, state-operated program or ~~eligible facility~~ approved facility school shall provide the Department of Education with a corrective action plan including timelines, or sufficient documentation that corrective actions ordered by the Department have been made, whichever is applicable.
- 7.05 (4) Within 20 days following the receipt of the corrective action plan of the administrative unit, state-operated program or ~~eligible facility~~ approved facility school, the Department of Education shall acknowledge receipt of such and indicate whether or not it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.
- 7.05 (5) If the administrative unit, state-operated program or ~~eligible facility~~ approved facility school does not agree with any findings or directives for corrective action it may appeal in accordance with Section 7.07 of these Rules.
- 7.05 (6) If the Department of Education is unable to secure voluntary compliance through the actions described above, the administrative unit, state-operated program or ~~eligible facility~~ approved

facility school shall be notified of the noncompliance and the subsequent steps to be taken by the Department of Education which may include any of the following or any other appropriate means of enforcing compliance requirements:

- 7.05 (6) (a) disapproval or failure to approve in whole or part, the application of the administrative unit, state-operated program or eligible facility approved facility school for funding;
- 7.05 (6) (b) order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;
- 7.05 (6) (c) withhold and/or terminate further financial assistance to the administrative unit, state-operated program or eligible facility approved facility school;
- 7.05 (6) (d) suspend payments, under an approved project, to the administrative unit, state-operated program or eligible facility approved facility school.
- 7.05 (7) Information regarding monitoring findings and resolutions shall be forwarded to the appropriate Department of Education staff for consideration in the accreditation process for a school district or the Colorado School for the Deaf and the Blind.

### 7.07 Appeals

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

## 2220-R-8.00

### RESPONSIBILITIES OF ADMINISTRATIVE UNITS, STATE-OPERATED PROGRAMS AND ELIGIBLE FACILITIES APPROVED FACILITY SCHOOLS

#### 8.01 General Responsibilities

[8.01(1) NO CHANGE]

- 8.01 (2) Duties and responsibilities of eligible facilities approved facility schools.

An eligible facility approved facility school with an on-grounds school approved ~~by the State Board of Education in accordance with Section 3.02(1) of these Rules~~ by the Facility School Board in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1, shall be responsible for:

- 8.01 (2) (a) Development of a Comprehensive Plan in accordance with the ~~provisions of Sections 3.02(1)(a)(viii) and 3.02(1)(e) of these Rules~~ Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

- 8.01 (2) (b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.
- 8.01 (2) (c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.
- 8.01 (2) (d) Maintenance and access to student records in accordance with Section 7.01 of these Rules.
- 8.01 (2) (e) IEP planning, in collaboration with the responsible administrative unit, and the delivery of services in accordance with the provisions of Sections 4.00, 5.00 and 8.00 of these Rules.
- 8.01 (2) (f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.
- 8.01 (2) (g) Staff development in accordance with Section 3.05 of these Rules.
- 8.01 (2) (h) Program evaluation in accordance with Section 3.06 of these Rules.
- 8.01 (3) Duties and Responsibilities of State-Operated Programs.

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

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

**8.02 Specific Responsibilities for Special Education Functions and Services**

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

including convening and conducting required meetings related to such special education functions.

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

### **8.03 Responsibility for Special Education Tuition**

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

### **8.04 Responsibility for Initial Assessment and Reevaluation**

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

- 8.04 (1) (c) Re-evaluation for children at ~~eligible facilities~~ approved facility schools shall be the responsibility of the administrative unit of residence.
- 8.04 (1) (d) When the charter contract between a charter school and its authorizer allows the charter school to provide initial evaluations and reevaluations, the charter school shall be responsible for conducting such evaluations and complying with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all such evaluations meet the requirements of Section 4.02.

**8.05 Meetings During Which a Disability or Eligibility is Initially Considered**

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

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

- 8.06 (1) If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's

individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the Special Education Director of the administrative unit of residence to participate as an IEP Team member. This includes on-line programs operated within the administrative unit of attendance. Exceptions to this Rule are as follows:

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

**[8.07 – 8.08 NO CHANGE]**

**2220-R-9.00**

**OUT OF DISTRICT PLACEMENTS**

**9.01 DEFINITIONS**

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

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

9.01 (1) (a) (i) The state average PPOR when an administrative unit of residence initiates a placement of a child with a disability into an ~~eligible facility~~ approved facility school for its day treatment or residential program, and the ~~eligible facility~~ approved facility school also provides the child’s educational program;

9.01 (1) (a) (ii) The PPOR of the district of residence when an administrative unit of residence places a child with a disability into an ~~eligible facility~~ approved facility school for the educational program only;

[9.01(1)(a)(iii)-(vii) NO CHANGE]

9.01(1)(b)-(g) NO CHANGE]

[9.01(2) NO CHANGE]

9.01 (3) **“Facility”** and **“Approved Facility School”** are defined in section 2.18 of these Rules, means ~~a day treatment center, residential child care facility, or other facility licensed by the department of human services pursuant to section 26-6-104, C.R.S., or a hospital licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S.~~

~~9.01 (3) (a) **Approved facility school** means an educational program that is operated by a facility to provide educational services to students placed in the facility, including special education services to children with disabilities, and that has been placed, pursuant to section 22-2-407, C.R.S., on the list of facility schools that that are approved to receive reimbursement for providing those educational services. An educational program provided by an administrative unit at a facility is not an approved facility school, but rather is an educational program of the administrative unit that does not require approval by the Department.~~

[9.01(4) NO CHANGE]

9.01 (5) **“Public Agency”**, for purposes of this Rule 9.00, means a public agency that is not an administrative unit and is legally authorized to place a child in ~~an eligible facility~~ a facility with an approved facility school or another out-of-home placement.

9.01 (6) **“Public Placement”** means the placement of a child with a disability in ~~an eligible facility~~ a facility with an approved facility school or another out-of-home placement by a court or public agency.

[9.01(7) NO CHANGE]

9.01 (8) **“Tuition Costs”** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an ~~eligible facility~~ approved facility school, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

## 9.02 OUT OF HOME PLACEMENT

9.02 (1) If it becomes necessary for a court or a public agency to place a child in a public placement (e.g., placements in ~~eligible facilities~~ approved facility schools and foster care homes):

9.02 (1) (a) Non-emergency placement: prior to the public placement, the court or public agency shall work cooperatively with the child’s then current administrative unit of residence and the administrative unit in which the placement is to be made to ensure that appropriate special education services are available for the child. The receiving agency, institution, administrative unit, state-operated program, or ~~eligible facility~~ approved facility school providing the services shall cooperate in the development of the IEP.

9.02 (1) (b) Emergency placement: if an emergency placement for the safety of the child is required, the placing court or placing public agency may make the emergency placement without first cooperating with the child’s then current administrative unit of residence or the administrative unit in which the placement is to be made.

9.02 (2) In no event shall a child be placed in an ~~eligible facility~~ approved facility school or an administrative unit that is unable to ensure the provision of special education services that are appropriate for the child.

## 9.03 RESPONSIBILITY FOR TUITION COSTS

### 9.03 (1) Criteria for School Choice Placements

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

#### 9.03 (1) (a) Eligible Disabilities

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

9.03 (1) (a) (i) A Vision ~~Disability~~ Impairment, Including Blindness;

9.03 (1) (a) (ii) A Hearing ~~Disability~~ Impairment, Including Deafness;

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

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

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

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

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

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

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

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

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

### 9.03 (2) Type of Tuition Placements

#### 9.03 (2) (a) Placement in ~~Eligible Facilities~~ Approved Facility Schools

9.03 (2) (a) (i) When a child with a disability is placed, by a public agency, into an eligible facility approved facility school, the district of residence is responsible for paying the educational costs over and above applicable revenues, also known as tuition costs. ~~The district of residence shall count the child as a child in an eligible facility on the October 1 Count, and the~~ The administrative unit of residence shall count the child for the December 1 Special Education

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

9.03 (2) (a) (ii) Any court of record, the Department of Human Services, or any other public agency authorized by law to place a child with a disability in ~~an eligible facility~~ a facility with an approved facility school shall notify in writing the child's administrative unit of residence, the administrative unit in which the ~~eligible facility~~ approved facility school is located and the Department of the placement within fifteen calendar days after the placement. If a court or public agency makes a public placement but fails to provide the required written notice, such court or public agency shall be responsible for the tuition costs for the child until such time as the required notification is made. If the child's administrative unit of residence does not provide written notice of disapproval of the child's placement in an ~~eligible facility~~ approved facility school by a court or public agency within fifteen calendar days after the required notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the administrative unit of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined in accordance with Sections 5.04(1) and (2) of these Rules.

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

9.03 (2) (a) (ii) (B) If an administrative unit of residence places a child with a disability into an ~~eligible facility~~ approved facility school for the educational program only, the district of residence must count the child on the October 1 Count as being in a private school placement, and the administrative unit of residence shall count the child on its December 1 Special Education Count as being in a private school placement. The ~~eligible facility~~ approved facility school shall not bill the Department for the state average PPOR for the child. Instead the

~~eligible facility~~ approved facility school shall bill the administrative unit of residence for the total cost of the child's educational program, as agreed to by the ~~eligible facility~~ approved facility school and the administrative unit of residence.

[9.03(2)(b)-(e) NO CHANGE]

[9.04 NO CHANGE]

[9.05 NO CHANGE]

## 9.06 DOCUMENTATION OF TUITION COSTS

### 9.06 (1) ~~Eligible Facilities~~ Approved Facility Schools

- 9.06 (1) (a) Annually, ~~eligible facilities~~ approved facility schools must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs charged to an administrative unit of residence for special education services provided to a child with disabilities who is determined to be the responsibility of the administrative unit of residence.
- 9.06 (1) (b) The documentation must be submitted on forms developed by the Department of Education, and must include the following:
- 9.06 (1) (b) (i) Special education expenditures defined in Section 2.00 of these Rules;
- 9.06 (1) (b) (ii) The number of days in the school year during which the ~~eligible facility~~ approved facility school offers the program; and
- 9.06 (1) (b) (iii) A separate set of proposed costs for services that differ from those offered during the regular academic year.
- 9.06 (1) (c) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.
- 9.06 (1) (d) A percentage of the per pupil operating revenue, to be determined annually by the Department of Education, shall be applied as revenue toward indirect costs of the special education program, such as utilities, maintenance, administrative support services, regular education, and other items that may be determined by the Department.
- 9.06 (1) (e) In no instance shall the total revenues received by the ~~eligible facility~~ approved facility school for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services. Based on this information, the Department will recommend to the State Board of Education tuition rates for ~~eligible facility~~ approved facility school. Costs for additional services required by an individual child, and documented on an IEP may be negotiated with the administrative unit of residence.

[9.06(2) – (4) NO CHANGE]

[9.07 NO CHANGE]

[10.00 NO CHANGE]

**[11.00 NO CHANGE]**

**[12.00 NO CHANGE]**