

DEPARTMENT OF EDUCATION
14 DE Admin. Code 925
Statutory Authority: 14 Delaware Code, Section 220 (14 Del.C. §220)

Education Impact Analysis
Pursuant to 14 Del.C. §122(d)

925 Children with Disabilities

PROPOSED

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities in order to change the eligibility criteria for Autism in 4.3, for Developmental Delay in 4.4, for Mental Disability in 4.9, for Orthopedic Impairment in 4.10 and for other Health Impairment in 4.11 and to replace 21.2 Reserved with 21.2 the Statewide Monitoring Review Board (SMRB) for Children with Autism.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all children receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all students' legal rights are protected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal law requires the state to make regulations concerning students with disabilities.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There will be no additional cost to the State and to the local school boards of compliance with the regulation.

925 Children with Disabilities

4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with 14 Del.C. Ch.7 and 14 Del.C. Ch.31 and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 Del.C. §1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

~~4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:~~

~~4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:~~

~~4.3.1.1 Impairment in reciprocal social orientation/interaction;~~

~~4.3.1.2 Extreme resistance to change and/or control;~~

~~4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or~~

~~4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.~~

~~4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.~~

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.3. Eligibility Criteria for Autism: The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder – Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

4.3.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

4.3.1.1 All students with an educational classification of autism demonstrate a marked, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

4.3.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

4.3.1.1.2 Development of peer relationships;

4.3.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people; or

4.3.1.1.4 Social or emotional reciprocity.

4.3.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 4.3.1.2.1. or 4.3.1.2.2. below:

4.3.1.2.1 A qualitative impairment in communication, as manifested by:

4.3.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

4.3.1.2.1.2 Relative failure to initiate or sustain a conversation with others;

4.3.1.2.1.3 Stereotyped, idiosyncratic, and/or repetitive speech; or

4.3.1.2.1.4 A lack of varied, spontaneous make-believe play or social imitative play.

4.3.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:

4.3.1.2.2.1 Encompassing preoccupation or circumscribed and restricted patterns of interest;

4.3.1.2.2.2 Apparently compulsive adherence to specific, nonfunctional routines/rituals;

4.3.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

4.3.1.2.2.4 Persistent preoccupation with parts/sensory qualities of objects.

4.3.1.3 All students with an educational classification of autism have impairments that:

4.3.1.3.1 Are inconsistent with the student's overall developmental/functional level; and

4.3.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

4.3.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

4.3.1.3.4 Are not primarily accounted for by an emotional disorder.

4.3.2 An educational classification of autism is established:

4.3.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

4.3.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 4.3.2.1.; and

4.3.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

4.3.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and/or fine motor) social/emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and/or fine motor) social/emotional functioning and adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his/her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same-aged peers.

4.4.2 Multiple sources/ methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

4.4.2.1 Developmental and medical history;

4.4.2.2 Interview with the child's parent or primary caregiver;

4.4.2.3 Behavioral observations;

4.4.2.4 Standardized norm-referenced instruments; and

4.4.2.5 Other assessments which could be used for intervention planning, such as dynamic or criterion-referenced assessments, behavior rating scales, or language samples.

4.4.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

4.4.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

Non-regulatory note: Under the Delaware Code, funding for the Developmental Delay category is only available through the Preschool Children with Disabilities block grant, except as authorized through the Special Education Funding Pilot.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf- blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time

and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written document for the formative intervention process used with the student. (See section 2.3, "Referral to Instruction Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 ~~Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) -I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) -I.Q. 35-50, +5 points; Severe Mental Disability (SMD) -I.Q. below 35.~~

4.9.1 ~~Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.~~

4.9.2 ~~The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.~~

4.10 ~~Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.~~

4.10.1 ~~A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.~~

4.10.2 ~~The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:~~

4.10.2.1 ~~Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or~~

4.10.2.2 ~~Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or~~

~~4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.~~

~~4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:~~

~~4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;~~

~~4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and~~

~~4.10.3.3 Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.~~

~~4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.~~

4.9 Eligibility Criteria for Mental Disability

4.9.1 Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

4.9.1.1 A level of intellectual functioning, as indicated below:

4.9.1.1.1 Educable Mental Disability: IQ 50-70 +/- 5 points;

4.9.1.1.2 Trainable Mental Disability: IQ 35-50 +/-5 points;

4.9.1.1.3 Severe Mental Disability: IQ below 35; and

4.9.1.2 Significant limitations in two or more areas of adaptive behavior, including communication, self-care, home/school living, social/interpersonal, community use, self-direction/coping, health and safety, functional academics, leisure/play, and work.

4.9.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

4.9.3 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

4.10 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

4.10.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

4.10.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and/or body use necessary for performing school work.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

4.10.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and

4.10.3.3 Prior program or school records (if available), and, when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history and/or psychological evaluation.

4.10.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

4.10.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children classified under the Orthopedic Impairment category will be counted as Physically Impaired in the Unit Count.

4.11 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

4.11.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

4.11.2 For ADD/ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:

4.11.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level:

4.11.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

4.11.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

4.11.2.1.3 Often does not seem to listen when spoken to directly;

4.11.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

4.11.2.1.5 Often has difficulty organizing tasks and activities;

4.11.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);

4.11.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

4.11.2.1.8 Is often easily distracted by extraneous stimuli;

4.11.2.1.9 Is often forgetful in daily activities; Or

4.11.2.2 Six (or more) of the following symptoms of hyperactivity-impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

4.11.2.2.1 Often fidgets with hands or feet and squirms in seat;

4.11.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected;

4.11.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

4.11.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;

4.11.2.2.5 Is often “on the go” or often acts as if “driven by a motor”;

4.11.2.2.6 Often talks excessively;

4.11.2.2.7 Often blurts out answers before questions have been completed;

4.11.2.2.8 Often has difficulty waiting turn;

4.11.2.2.9 Often interrupts or intrudes into conversations or games; and

4.11.2.3 Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before seven years of age;

4.11.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

4.11.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

4.11.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

4.11.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.11.3.1 Written documentation from the formative intervention process used with the student (see section 2.3, p.11 “Referral to Instructional Support Team” above). The documentation shall include a clear statement of the student’s presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.11.3.2 Medical records documenting the health impairment or, in the case of students with ADD/ADHD, medical records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re-evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in number 4.11.2 above.

4.11.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

4.11.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children classified under the Other Health Impaired category will be counted as Physically Impaired in the Unit Count.

~~4.11~~ 4.12 Eligibility Criteria for Speech and/or Language Impairment ~~Eligibility Criteria~~: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

~~4.11.1~~ 4.12.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

~~4.12~~ 4.13 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

~~4.12.1~~ 4.13.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

~~4.12.2~~ 4.13.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

~~4.13~~ 4.14 Eligibility Criteria for Visual Impairment ~~Eligibility Criteria~~

~~4.13.1~~ 4.14.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

~~4.13.2~~ 4.14.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

~~4.13.3~~ 4.14.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

~~4.13.4~~ 4.14.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

~~4.13.5~~ 4.14.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

~~4.14~~ 4.15 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

~~4.14.1~~ 4.15.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

~~4.14.2~~ 4.15.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

~~4.14.2.1~~ 4.15.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

~~4.14.2.1.1~~ 4.15.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

~~4.14.2.1.2~~ 4.15.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

~~4.14.2.1.3~~ 4.15.2.1.3 Oral motor involvement which may affect the development of normal articulation,

~~4.14.2.1.4~~ 4.15.2.1.4 Speech Fluency, or

~~4.14.2.1.5~~ 4.15.2.1.5 Voice Quality

~~4.14.3~~ 4.15.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

~~4.14.4~~ 4.15.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

3 DE Reg. 1551 (5/1/00)

4 DE Reg. 470 (9/1/00)

21.0 Special Programs for Children with Autism:

21.1 Definitions of terms applicable only to special programs for children with autism.

21.1.1 **“Behavior Management Procedure”** means any procedure used to modify the rate or form of a target behavior.

21.1.2 **“Behavior Management Target”** means any child’s behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child’s actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

21.1.3 **“Emergency Intervention Procedure”** means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

21.1.4 **“Ethical Use”** means the application of a procedure in a manner that is consistent with current community values and protects all of a child’s rights.

21.1.5 **“Informed Consent”** means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

21.1.6 **“Least Restrictive Procedure”** means that behavior management procedure which is the least intrusive into, and least disruptive of, the child’s life, and that represents the least departure from normal patterns of living that can be effective in meeting the child’s educational needs.

21.1.7 **“School”** means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

21.1.8 **“Accepted Clinical Practice”** means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer-reviewed journals or similar professional literature.

21.2 ~~Reserved.~~ The Statewide Monitoring Review Board (SMRB) shall be generally administered by the Director for State Services for Children with Autism and the Director of the Exceptional Children and Early Childhood Education Group, Department of Education.

21.2.1 The purpose of the SMRB is to define research-based best educational practices for students with autism served in approved programs in Delaware. This includes reviewing and making recommendations to the Secretary of Education regarding the special education and related services for children with autism in approved programs, including programs for students with autism whose placement in private facilities has been authorized by the Department of Education.

21.2.2 The SMRB shall consist of the following members:

21.2.2.1 Director for State Services for Children with Autism.

21.2.2.2 Director of the Exceptional Children and Early Childhood Education Group, or designee.

21.2.2.3 One administrator from each LEA/charter school with an approved program for students with autism, or their designee. The administrator or designee must have experience in, and responsibility for, the program for students with autism.

21.2.2.4 One non-administrative experienced professional from each approved program for students with autism. These individuals are nominated by the administrator responsible for the approved program and are subject to the approval of the Director for State Services for Children with Autism.

21.2.2.5 Two non-voting public representatives nominated annually by the Statewide Parent Advisory Committee. These individuals must not have a child currently served in an approved program.

21.2.3 The SMRB shall operate under the following procedures:

21.2.3.1 The Director of State Services for Children with Autism shall serve as the Chairperson of the Board.

21.2.3.2 A majority of the voting members of the board shall constitute a quorum.

21.2.3.3 Decisions of the Board shall be determined by a majority vote of the quorum.

21.2.3.4 The chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled at least five times per year, contingent upon agenda items.

21.2.3.5 The SMRB shall discharge its responsibilities in accordance with the IDEA and the

Administrative Manual for Special Education Services (AMSES).

21.2.3.6 The SMRB shall function in an advisory capacity and the procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA), and local school districts, charter schools, or agencies, shall not be diminished by the activities of the SMRB.

21.2.4 The SMRB has the following responsibilities:

21.2.4.1 To determine which educational methods and curricula are consistent with research-based best practices for students with autism. This includes reviewing and making recommendations regarding proposed new practices.

21.2.4.1.1 Requests for review of practices may be submitted to the SMRB by SMRB members, the Secretary of Education, the State Parent Advisory Committee, Superintendents of LEAs, or Chief Administrators of Charter Schools.

21.2.4.1.2 If the party making the request for review disagrees with the recommendation of the SMRB regarding best educational practices, they may request the Secretary of Education appoint an independent expert to review the practice.

21.2.4.2 To review, at least annually, educational programming and aggregated performance data for students with autism in approved programs in Delaware.

21.2.4.3 To make recommendations based on this review regarding appropriate strategies, supports, services, and professional development necessary to ensure the implementation of research-based best educational practices with respect to the evaluation and educational programming for students with autism.

21.2.4.4 To assist LEAs /charter schools with approved programs in developing and implementing plans to address the recommendations of the SMRB.

21.2.4.5 To submit an Annual Report by September 1 of each year to the Secretary, Department of Education and the President of the State Board of Education.

21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.

21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

21.4.3 A current statewide membership list shall be provided to all parents.

21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

21.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management

procedures requiring after-the-fact examination. (See Section 21.7.1)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

21.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

21.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

21.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

21.7.1.1 Without further PRC/HRC review during the year approved;

21.7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

21.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

21.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

21.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

21.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

21.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/HRC annual review at least one month prior to the review date.

21.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case- by-case review.

21.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2 Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8 Have access to the educational records of any child with autism for purposes of 21.5.1 and 21.6.1 of this section.

21.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

21.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

21.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case-by- case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review

the proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

3 DE Reg. 1709 (6/1/00)

*** Please Note: As the rest of the sections were not amended they are not being published. The complete regulation can be found at: <http://www.state.de.us/research/AdminCode/title14>**

8 DE Reg. 225 (8/1/04)