

RULES OF THE ALABAMA STATE BOARD OF EDUCATION
 STATE DEPARTMENT OF EDUCATION
 CHAPTER 290-8-9
 SPECIAL EDUCATION SERVICES

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290-8-9-.01

290-8-9-.01(3)(a)

290-8-9-.01 Child Identification.**(1) Child Find.**

(a) Education agencies serving children with disabilities must develop and implement procedures that ensure that all children within their jurisdiction, birth to twenty-one, regardless of the severity of their disability, and who need special education and related services are identified, located, and evaluated. Child Find applies to children who attend private schools, including children attending religious schools, within the education agency's jurisdiction, highly mobile children with disabilities (i.e. migrant and homeless children), and children who are suspected of having a disability and are in need of special education even though they are advancing from grade to grade. Child Find also includes a practical method of determining that children are currently receiving needed special education and related services.

(b) Education agencies must participate in a transition planning conference arranged by the designated lead agency for children who participated in early intervention programs. In order to experience a smooth and effective transition to preschool programs in a manner consistent with section 637 (a) (8) of the Act, education agencies must have procedures describing the transition planning conference process included in the *Education Agency Plan*.

(c) Education agencies are required to make a free appropriate public education (FAPE) available to each eligible child residing in their jurisdiction no later than the child's third birthday; and have an IEP in effect for the child by that date in accordance with Ala. Admin. Code r. 290-8-9-.01 through -.05. If the child's third birthday falls during the summer months, the IEP Team will determine when special education services begin.

(2) Prereferral Intervention Strategies in the General Education Class.

Before a child is referred for special education services, prereferral intervention strategies must be implemented in the general education program and monitored by the Building Based Student Support Team (BBSST) or other designated staff for at least six weeks or longer, depending on the problem and be determined unsuccessful. Any child referred December 1, 2000, and after must have a prereferral form and functional assessment of the classroom environment completed for every referral even if the education agency is not currently implementing the Building Based Student Support Team model. This rule may be waived for a child who has severe problems that require immediate attention, for three- and four-year olds, for five-year olds who have not been in kindergarten, for children with articulation, voice, or fluency problems only, for children with a medical diagnosis of traumatic brain injury, and for a child who has been referred by his/her parents.

(3) Referral. Education agencies must develop and implement procedures regarding the processing of referrals for special education evaluations.

(a) The referral form must be completed each and every time a student is suspected of having a disability. The referral-to-placement process begins with the date that the education agency receives a written referral and must be completed within ninety calendar days regardless of any scheduled interruptions in the scholastic year or the scheduled summer vacation.

290-8-9-.01(3)(b)

290-8-9-.01(3)(g)

(b) For a parent who is unable to complete a written referral, the education agency must obtain information from that parent and complete the written referral.

(c) Education agencies may not limit referrals by the number per year or the time of year that referrals are accepted.

(d) As part of the referral process, information must be gathered as part of the referral to determine if there are any environmental, cultural, language, or economic differences that might mask a student's true abilities and thereby affect the student's performance in the areas evaluated. Tests and evaluative materials selected and administered should be sensitive to environmental, cultural, linguistic, and economic differences.

(e) The IEP Team must review the referral and determine if the child will be evaluated for special education services. If the IEP Team determines that the child should not be evaluated for special education services, written notice, that meets the requirements in Ala. Admin. Code r. 290-8-9-.08(4)(b), must be given to parents. If the IEP Team determines that the child should be evaluated for special education services, the consent requirements in Ala. Admin. Code r. 290-8-9-.08(4)(a), must be followed. In addition to obtaining consent, for children suspected of being eligible for services in the area of mental retardation, when the parent participates in the IEP meeting to discuss the referral, a home version of the adaptive behavior assessment must be completed by the parent/guardian at that time. The parent/guardian may complete the scale or if it is an interview version, it must be completed by conducting a parental interview. If the parent/guardian does not attend the IEP meeting to discuss the referral, a home version of the adaptive behavior assessment must be sent home. If the adaptive behavior instrument is in the form of an interview, it may be sent home, but must be completed by school personnel in conjunction with the parents by telephone, home visit, or other mutually agreed upon arrangements. The local education agency must make at least two attempts, and document such attempts, to have the parent/guardian complete the home version of the adaptive behavior assessment within the 60-day referral to eligibility process. However, the absence of a home version of the adaptive behavior assessment may not delay the 60-day referral to eligibility process. The school version and the home version of the adaptive behavior assessment must be conducted using the same test instrument.

(f) If the child is evaluated, a qualified team, including the parent, has sixty calendar days from the date of the receipt of the referral to determine eligibility for special education services.

(g) If a child is eligible for special education services, the IEP Team has thirty days from the date of eligibility determination to develop an IEP.

290-8-9-.02

290-8-9-.02(1)(c)

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1412 - 1414; 34 CFR §300.121(c), 125, 132, 343(b)(2), 451, 533.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 deleted and reserved 290-8-9-.02(5) effective 1-21-91; 8-8-91 adopted 290-8-9-.02-.45ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.01-.58ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.01(1)(b)-.73ER effective 6-14-01; adopted ER as regular rule effective 9-13-01.

290-8-9-.02 Evaluations. Education agencies must develop and implement procedures to evaluate those children suspected of having a disability that adversely affects their educational performance and who may need specially designed instruction.

(1) **Evaluation Requirements.** If the IEP Team determines that the child should be evaluated, the evaluation must be conducted as follows:

(a) Before an initial evaluation can be conducted, the education agency must obtain written consent as required by the Ala. Admin. Code r. 290-8-9-.08(4)(a). If consent for evaluation is refused, the education agency may pursue an evaluation through mediation and/or due process. Mediation and due process procedures are described at Ala. Admin. Code r. 290-8-9-.08(8)(b)(c).

(b) Before the initial provision of special education and related services, a full and individual evaluation of the child's educational needs must be conducted.

(c) As part of an initial evaluation and as part of all required reevaluations, the IEP Team and other qualified professionals, as appropriate, must:

290-8-9-.02(1)(c)1.

290-8-9-.02(1)(k)

1. Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related services providers, and

2. On the basis of the review of existing evaluation data and input from the child's parents, identify what additional data, if any, are needed to determine:

(i) Whether the child has a disability, or, in the case of a reevaluation of a child, whether the child continues to have a disability;

(ii) The present levels of performance and educational needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(d) The child must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(e) No single procedure may be used as the sole criterion for determining whether the child has a disability or in determining an appropriate educational program for a child.

(f) Tests must be provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

(g) Standardized tests must be validated for the specific purpose for which they are used and administered by trained and knowledgeable personnel in conformance with the instructions provided by the producer of the test.

(h) Testing and evaluation materials and procedures used to assess children must be selected and administered so as not to be discriminatory on a racial or cultural basis.

(i) A variety of assessment tools and strategies must be utilized to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved and progress in the general curriculum or, for preschool children, to participate in appropriate activities.

(j) Technically sound instruments that may assess the relevant contribution of cognitive and behavioral factors in addition to physical or developmental factors must be utilized.

(k) Assessment tools and strategies that provide relevant information that directly assists persons in determining that the educational needs of the child are provided must be used.

290-8-9-.02(1)(1)

290-8-9-.02(2)

(l) Tests and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(m) Tests must be selected and administered to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(n) Children with special needs, such as those who have significant communication needs, limited English proficiency, hearing impairments, visual impairments, multiple disabilities, language impairments, physical impairments, etc., must be administered evaluations appropriately developed and/or modified for their needs.

(o) Materials and procedures used to assess a child with limited English proficiency must be selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(p) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.

(q) In evaluating each child with a disability, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been identified.

(r) For children suspected of having a specific learning disability, the evaluation team must include:

1. The child's general education teacher, or
2. If the child does not have a general education teacher, a general education teacher qualified to teach a child of his/her age, or
3. For a child of less than school age, an individual qualified to teach a child of his/her age, and
4. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(s) Interview versions of test instruments that require parental input must be completed by school personnel in conjunction with parents. Interviews may be completed by telephone, home visit, or other mutually agreed upon arrangements.

(2) **Individual Intellectual Evaluations.** Education agencies must conduct or have conducted individual intellectual evaluations in accordance with the following rules:

290-8-9-.02(2)(a)

290-8-9-.02(3)(d)

(a) Individual intellectual evaluations may only be conducted by clinical psychologists, school psychologists, school psychometrists, clinical psychiatrists, and counselors qualified to administer such evaluations. Graduate students currently enrolled in approved training programs leading to being qualified to administer individual intellectual evaluations may administer individual intellectual tests as part of their training if the test is part of a reevaluation and their written reports are approved and cosigned by a person properly qualified.

(b) The person conducting the individual intellectual evaluation must develop a comprehensive written report. Information from the evaluation must be considered by a team of professionals, including the parent, qualified to determine eligibility for special education services.

(c) The person conducting the individual intellectual evaluation may not determine eligibility for special education services, but he/she may make recommendations to the eligibility team or be a member of the team.

(3) Independent Educational Evaluations. Parents have the right to obtain an independent educational evaluation of their child subject to the following criteria:

(a) Each public education agency must provide to parents, upon request for an independent educational evaluation, information regarding where an independent educational evaluation may be obtained, and the criteria, including the location of the evaluation and the qualifications of the examiner that the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to obtain an independent educational evaluation.

(b) A public education agency may not impose conditions or timelines related to obtaining an independent educational evaluation except as described at Ala. Admin. Code r. 290-8-9-.02(3)(a).

(c) For the purposes of Ala. Admin. Code r. 290-8-9-.03:

1. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public education agency responsible for the education of the child in question.

2. Public expense means that the public education agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(d) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public education agency. However, the public education agency may initiate a due process hearing to show

290-8-9-.02(3)(e)

290-8-9-.02(5)(c)

that the education agency's evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(e) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the public education agency, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education to the child, and may be presented as evidence at a due process hearing regarding that child.

(f) If an impartial due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(g) If the parent requests an independent educational evaluation, the public education agency may ask for the parent's reason why he/she objects to the agency's evaluation. However, the explanation by the parent may not be required and the public education agency may not unreasonably delay either providing the independent evaluation at public expense or initiating a due process hearing to defend the agency's evaluation.

(4) Out-of-State Evaluations. Out-of-state evaluations may be used to determine eligibility for special education services at the discretion of the education agency, if the evaluations meet the rules regarding evaluation contained in the Ala. Admin. Code r. 290-8-9-.02 and .03.

(5) Reevaluation.

(a) Once the initial evaluation to determine whether a child has a disability is completed, any subsequent evaluation is considered to be a reevaluation that requires consent procedures in accordance with Ala. Admin. Code 290-8-9-.08(4)(a).

(b) Education agencies must ensure that all children with disabilities are reevaluated every three years to determine whether the child continues to have a disability and needs special education and related services. A reevaluation may be conducted more frequently if conditions warrant, or if the child's parents or teachers request it. IEP Teams must use their discretion in determining whether additional data is needed for newly enrolled special education children transferring from another school system, either in-state or out-of-state, prior to the three-year requirement.

(c) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is eligible and continues to need special education and related services, the education agency must provide written notice to the child's parents of the reasons for that determination and their right to request an evaluation. The education agency will not be required to conduct evaluations to determine continued eligibility unless requested by the child's parents or determined appropriate by the IEP Team.

290-8-9-.02(5)(d)

290-8-9-.03

(d) Education agencies must obtain parental consent prior to conducting any evaluations as part of the reevaluation of a child with a disability unless the education agency can document two attempts to obtain consent with no response from the parent. Refer to Ala. Admin. Code r. 290-8-9-.08(4)(a)2.(i).

(e) Reevaluation is not required before child with a disability exits school due to graduation with a regular or advanced diploma or reaching the maximum age of eligibility. However, prior written notice must be given. Refer to Ala. Admin. Code r. 290-8-9-.08(4)(b)1.

(6) Length of Time Evaluations are Valid for Eligibility.

(a) Unless special conditions warrant, any evaluation conducted within one year prior to the date of the eligibility determination meeting is considered valid for determining initial eligibility for special education services.

(b) For reevaluation, it is the responsibility of the IEP Team to determine if evaluations are needed.

(7) State and District-Wide Assessments. Education agencies must develop and implement procedures to ensure that every child with disabilities is provided the opportunity to participate in the same evaluations as his/her nondisabled peers. The IEP Team must also determine appropriate accommodations and modifications, if necessary, for the child's participation.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 5(b), 1412, 1414-1415; 34 CFR §300.138, 320, 321, 530-533, 536, 540.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 deleted 290-8-9-.03(9)(a) and added new 290-8-9-.03(9)(a) and (a)l. through 7. effective 1-21-91; 8-8-91 adopted 290-8-9-.03-.46ER effective 8-8-91; 10/10/91 adopted ER as regular rule effective 11/19/91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.02-.59ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01.

290-8-9-.03 Definitions and Minimum Evaluation Criteria to Determine Eligibility.

Each education agency must develop and implement procedures to identify and evaluate those children suspected of having a disability that adversely affects their educational performance and who may need specially designed instruction. The evaluations listed in the Ala. Admin. Code r. 290-8-9-.03 are the required minimum evaluations that should be administered prior to determining initial eligibility for special education services. Professional judgment should be used to determine if the results of any of the required evaluations are reliable sources of information, or if other assessment

290-8-9-.03(1)

290-8-9-.03(1)(c)5.

data may prove to be a more accurate indicator of the child's level of functioning. The IEP Team may determine, on a case-by-case basis, that other evaluations may be needed. Vision and hearing screenings must be the first evaluations conducted for all children suspected of having a disability unless otherwise indicated.

(1) Autism.

(a) Definition. Autism means a developmental disability that significantly affects verbal and nonverbal communication and social interaction evident before age three that adversely affects educational performance. This includes other pervasive developmental disorders. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or changes in daily routines, and unusual responses to sensory experiences. The term does not apply to children who have an emotional disturbance as identified in Ala. Admin. Code r. 290-8-9-.03(4). A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if all of the preceding criteria are met.

(b) Criteria.

1. Score on an autism rating scale indicating the presence of autism.
2. Medical, clinical, psychiatric, or school psychologist evaluation, or an assessment by a qualified person trained in the area of autism evaluation.

3. Evidence that language skills and social skills adversely affect educational performance.

4. Evidence that educational performance is also adversely affected in one or more of the following areas:

(i) Educational achievement.

(ii) Gross motor, fine motor, and/or sensori/motor planning.

5. Evidence of onset of autistic-type characteristics/behaviors.

(c) Evaluations Required.

1. Autism rating scale.

2. Medical, psychiatric, clinical, and/or school psychologist evaluation or an assessment by a qualified person trained in the area of autism evaluation.

3. Language evaluation and behavior rating scale and/or adaptive behavior rating scale.

4. Performance measures such as, developmental, intellectual, achievement (individual or group), motor, criterion-referenced tests, curriculum-based assessments, work samples, portfolios, observation.

5. Structured interview with the parent/primary caregiver.

290-8-9-.03(2)

290-8-9-.03(3)(a)5.

(2) Deaf-Blindness.

(a) Definition. Deaf-Blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with hearing or visual impairments.

(b) Criteria.

1. Audiological data indicating that the individual has a hearing impairment.
2. Optometric and/or ophthalmic data indicating that the individual has a visual impairment.
3. Evidence of severe communication needs.
4. Evidence of severe educational needs related to the functional use of hearing and vision.

(c) Evaluations Required.

1. Audiological evaluation.
2. Optometric/Ophthalmic evaluation.
3. Documentation of severe communication needs that after appropriate accommodations have been made, the disability adversely affects educational performance.
4. Documentation of severe educational needs that after appropriate accommodations made, the disability adversely affects educational performance.

(3) Developmental Delay.

(a) Definition. A child becomes eligible for this area of disability on his/her third birthday if there is a significant delay in one or more of the following areas:

1. Adaptive development,
2. Cognitive development,
3. Communication development,
4. Social or emotional development, and/or
5. Physical development;

and if the child needs special education services. A child identified with a developmental delay must be evaluated prior to his/her ninth birthday to determine continued eligibility for special education services. At age nine, a child is no longer eligible in the area of developmental delay and must be eligible in another area of disability in order to continue special education services. If a child turns nine during the school year and is eligible for an area of disability, that child may continue to receive special education services in his/her current program for the remainder of that school year. A child who

290-8-9-.03(3)(b)

290-8-9-.03(4)(a)

turns nine during the school year and is no longer eligible for special education services will be served in general education programs for the remainder of the school year.

(b) **Criteria.**

1. The score in one developmental domain must be at least two standard deviations below the mean on a standardized, norm-referenced instrument; or the scores on two or more developmental domains must be at least one and a half standard deviations below the mean on a standardized, norm-referenced instrument. Only total or domain scores may be used to determine a developmental delay.

2. Supporting evidence in the area(s) of delay identified according to the requirements in Ala. Admin. Code r. 290-8-9-.03(3)(b)1. on either a criterion-referenced instrument or an additional norm-referenced instrument.

3. Evidence that the developmental delay adversely affects the child's performance in age-appropriate activities.

(c) **Evaluations Required.**

1. All five developmental domains must be evaluated on a standardized, norm-referenced instrument(s).

2. Evaluation in the identified area(s) of delay with a criterion-referenced instrument or an additional standardized, norm-referenced instrument.

3. **Evidence:**

(i) Written summary of a family interview documenting strengths, needs, and concerns; and

(ii) Written summary of an observation of the child in a natural environment or age-appropriate environment, or written summary of performance on the Individualized Family Service Plan (IFSP).

(d) Education agencies may identify preschool children in the other disability areas instead of using the category of developmental delay. However, if an education agency chooses to use the term developmental delay, the agency must use the State's criteria.

(4) Emotional Disturbance.

(a) **Definition.** Emotional Disturbance means a disability characterized by behavioral or emotional responses so different from appropriate age, cultural, environmental, or ethnic norms that the educational performance is adversely affected. Educational performance includes academic and/or social/emotional skills. Such a disability is more than a temporary expected response to stressful events in the environment, is consistently exhibited in the educational environment, and persists despite

290-8-9-.03(4)(a)1.

290-8-9-.03(4)(c)4.(i)

individualized intervention within the general education and other settings. One or more of the following characteristics must be exhibited over a long period of time and to a marked degree that adversely affects educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional Disturbance does not include socially maladjusted children unless they meet the criteria for emotional disturbance as defined in Ala. Admin. Code r. 290-8-9-.03(4)(a)1. through 5., but does include children who are schizophrenic.

(b) Criteria.

1. Evidence that the problem is not due to intellectual, sensory, or health factors.
2. Scores on three behavior rating scales that are considered clinically significant by the test authors. Results from three independent raters, one of whom may be the parent, must be considered.
3. Evidence that the emotional disturbance adversely affects the child's academic performance and/or social/emotional functioning in the environment.
4. Evidence that the emotional disturbance is exhibited over a long period of time (typically six months) and to a marked degree, and that the child's educational performance is adversely affected.
5. Observational data that documents the emotional disturbance in two or more educational settings.

(c) Evaluations Required.

1. Individual intellectual evaluation.
2. Administration of the same behavior rating scale by at least three persons, one of whom may be the parent, who have had contact with the child for at least six weeks.
3. Individual educational achievement evaluation and the evaluations in Ala. Admin. Code r. 290-8-9-.03(4)(c)2. and 4.
4. Documentation that the emotional disturbance is exhibited over a long period of time (typically six months) to a marked degree that adversely affects educational performance. Such documentation may include, but is not limited to:
 - (i) Teacher, parent, and/or child interview(s).

290-8-9-.03(4)(c)4.(ii)

290-8-9-.03(6)(b)1.

- (ii) Clinical psychological/psychiatric reports.
 - (iii) Observation of the child in an educational environment other than the observation required in Ala. Admin. Code r. 290-8-9-.03(4)(c)5.
 - (iv) School psychologist/counselor report.
 - (v) Language evaluation.
 - (vi) Documentation of environmental, socio-cultural, and/or ethnic information.
 - (vii) Medical reports.
 - (viii) Anecdotal records from classroom teacher(s) or other education agency personnel.
5. Observation by a qualified professional in two or more educational settings.

(5) Hearing Impairment.

- (a) Definition. Hearing Impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance. This term includes both deaf and hard-of-hearing.
- (b) Criteria.
 - 1. Audiological data indicating that the child has a hearing impairment.
 - 2. Evidence that the educational performance is adversely affected by the disability.
 - 3. Following the implementation of appropriate accommodations, the disability continues to affect educational performance.
- (c) Evaluations Required.
 - 1. Audiological evaluation.
 - 2. Performance measures such as group or individual intelligence scores, individual/group education achievement and/or diagnostic test(s), classroom observation, review of child's existing records (i.e. attendance, health).
 - 3. Documentation of accommodations implemented, including length of time used.

(6) Mental Retardation. Refer to Ala. Admin. Code r. 290-8-9-.15 for exceptions to this rule.

- (a) Definition. Mental Retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects the child's educational performance.
- (b) Criteria.
 - 1. Total or full-scale intelligence quotient must be at least two standard deviations below the mean (usually 70 or below).

290-8-9-.03(6)(b)2.

290-8-9-.03(8)(b)1.

2. Total score on an adaptive behavior scale or two subcomposite scores on an adaptive behavior scale must be at least two standard deviations below the mean (usually 70 or below). A school version of an adaptive behavior assessment is required. A home version of an adaptive behavior assessment is required to be completed by the parent consistent with Ala. Admin. Code r. 290-8-9-.01(3)(e).

3. Evidence that the disability adversely affects educational performance.

4. Determination of any environmental, cultural, language, or economic differences that might mask the student's true abilities. Refer to Ala. Admin. Code r. 290-8-9-.01(3)(d).

(c) Evaluations Required.

1. Individual intellectual evaluation.

2. Individual adaptive behavior evaluation (Note: School version and home version must be conducted using the same test instrument).

3. Individual educational achievement evaluation.

4. Environmental, cultural, language, and economic information.

(7) Multiple Disabilities.

(a) Definition. Multiple Disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(b) Criteria. The child must meet all eligibility criteria for two or more areas of disabilities as defined at Ala. Admin. Code r. 290-8-9-.03.

(c) Evaluations Required. See requirements for evaluation under each area of disability.

(8) Orthopedic Impairment.

(a) Definition. Orthopedic Impairment includes impairments caused by congenital abnormality (e.g., spina bifida), disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy). Having a medical diagnosis alone is not enough to justify being identified in the area of orthopedic impairment. The impairment must adversely affect educational performance.

(b) Criteria.

1. Evidence of an orthopedic impairment

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290-8-9-.03(8)(b)2.

290-8-9-.03(8)(c)1.

2. Evidence that the orthopedic impairment adversely affects educational performance.

3. Accommodations have been tried in general education class(es).

(c) Evaluations Required.

1. Documentation of the orthopedic impairment (medical diagnosis/physicians statement, if available).

290-8-9-.03(8)(c)2.

290-8-9-.03(9)(c)4.

2. Performance measures such as developmental scores, group or individual intelligence scores, individual/group education achievement and/or diagnostic test(s), classroom observation, motor assessments, criterion-referenced tests, curriculum-based assessments, review of child's existing records (i.e. attendance, health).

3. Documentation of accommodations that may include, but are not limited to, teacher interview(s), classroom observation(s), health records, anecdotal records, and therapy evaluations.

(9) Other Health Impairment.

(a) **Definition.** Other Health Impairment means limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder, attention deficit hyperactivity disorder, or diabetes. Having a medical diagnosis alone is not enough to justify being identified in the area of other health impairment. The impairment must adversely affect educational performance.

(b) **Criteria.**

1. Evidence of a health impairment.

2. Evidence that the health impairment adversely affects educational performance.

3. For children being evaluated for attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), the scores on the same behavior rating scale or test instruments designed specifically to determine the presence of ADD/ADHD must be considered clinically significant by the test authors. Results from three independent raters, one of whom may be the parent, must be considered.

4. Accommodations have been tried in general education class(es).

(c) **Evaluations Required.**

1. Documentation of the impairment (medical diagnosis/statement, if available).

2. Performance measures such as group or individual intelligence scores, individual/group education achievement and/or diagnostic tests, classroom observations, motor assessments, criterion-referenced tests, curriculum-based assessments, review of child's existing records, (i.e. attendance, health, discipline).

3. Administration of the same behavior rating scale or ADD/ADHD scale by at least three persons, one of whom may be the parent.

4. Documentation of accommodations that may include, but are not limited to, teacher interview(s), anecdotal records, classroom observation(s), health records, and therapy evaluations.

(10) Specific Learning Disabilities. Refer to Ala. Admin. Code r. 290-8-9-.12 for exceptions to this rule.

(a) **Definition.** Specific Learning Disabilities means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. Children with specific learning disabilities will demonstrate a severe discrepancy between intellectual ability and achievement in one or more of the following areas: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, or written expression. No single criterion or specific number of characteristics can be used in identifying children with specific learning disabilities. Rather, the age-appropriateness of observed behaviors and the frequency, intensity, and duration of a child's learning problems are critical in distinguishing specific learning disabilities from learning problems resulting from such factors as low motivation, underachievement, or inadequate instruction.

(b) **Criteria.**

1. **Low Achievement/Functioning in Specific Area(s).** When provided with appropriate learning opportunities, children with specific learning disabilities do not achieve commensurate with ability level. Their achievement in one or more of the following area(s) is below expectancy: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, and/or written expression.

2. **Exclusion of Other Primary Conditions.** The area of specific learning disabilities does not include children whose learning problems are primarily the result of visual, hearing, or motor impairments; mental retardation; emotional disturbance or environmental, cultural, or economic disadvantage.

3. **Severe Discrepancy Between Intellectual Ability and Achievement using a regression to the mean predicted achievement model.** Using either the table provided by the State Department of Education, Special Education Services, or the predicted achievement tables as provided by test publishers, the obtained achievement scores on two subtests or two composites from two different individual standardized norm-referenced achievement tests in the area of suspected disability, or one broad-range achievement test should be greater than one standard deviation unit or at least sixteen points below the expected achievement score using instruments with a common metric (mean of 100 and standard deviation of 15). Documentation of the severe discrepancy must be included in the written report of the eligibility team.

(c) **Evaluations Required.**

290-8-9-.03(10)(c)1.

290-8-9-.03(11)(b)2.

1. Documentation of low achievement based on teacher referral information, classroom tests, and other related information. Required procedures include:

(i) Observation. At least one team member other than the child's regular teacher must conduct a comprehensive systematic observation of the child's academic performance in the regular classroom setting. The observation should be directed to the specific area(s) of suspected learning disability. In the case of a child of less than school age or out of school, a team member must observe the child in an environment appropriate for a child of that age.

(ii) Work samples in the specific area(s) of suspected learning disability.

2. Documentation that the learning problem is not the result of other primary conditions. Refer to Ala. Admin. Code r.290-8-9-.03(10)(b)2.

(i) Administer a behavior rating scale to exclude emotional/behavioral problems.

(ii) Document that the learning problem is not due to environmental, cultural, or economic disadvantage.

3. To calculate the severe discrepancy, administer:

(i) Individual intellectual evaluation.

(ii) Individual achievement test(s). Two subtests or two composites in the area of suspected disability, from two different individual standardized norm-referenced achievement tests, or, one broad-range achievement test.

(11) Speech and Language Impairment.

(a) Definition. Speech and Language Impairment means a communication disorder in the area of articulation, voice, fluency, or language that adversely affects a child's educational performance.

(b) Criteria.

1. Articulation.

(i) Errors are primarily characterized by substitutions, distortions, additions, and omissions. Phonological errors are in excess of developmental expectations and some nondevelopmental processes may be noted. Errors are not readily stimulable and connected speech may be unintelligible or may be intelligible only to familiar listeners or within known contexts.

(ii) Children who exhibit a tongue thrust may be eligible for speech/language services if they also exhibit an associated articulation disorder. Speech/language services are not a required service for children who exhibit tongue thrust only.

2. Voice. Voice is abnormal in vocal quality, pitch, loudness, resonance and/or duration and is inappropriate for the child's age and sex. Deviance is noticeable and distracting to any listener. This disorder adversely affects communication.

290-8-9-.03(11)(b)3.

290-8-9-.03(11)(c)3.(iii)

3. Fluency. Abnormally disfluent speech is observed during conversation and/or structured speaking tasks. Listeners are distracted by the child's disfluent speech and distracting concomitant behaviors may be observed. Child is aware of this disorder and may exhibit fear or avoidance of speaking. The child's ability to communicate is adversely affected by this disorder.

4. Language. Syntactic, morphologic, semantic, and/or pragmatic errors are observed. Child's ability to comprehend or use spoken language is adversely affected. A language disability would be reflected by the scores described below:

(i) Total Language Standard Score or Quotient of 77 or below or more than 1.5 standard deviations below the mean on a standardized comprehensive language test containing both receptive and expressive components.

(ii) If the total language standard score does not meet the criteria in Ala. Admin. Code r. 290-8-9-.03(11)(b)4.(i), then a standard score or quotient of 77 or below in one area (receptive or expressive) of a comprehensive language test and a standard score or quotient of 77 or below on an assessment of a specific language component (semantics, syntax, morphology, processing, phonological awareness, or pragmatics) may be used. The assessment of a specific language component must be in the same area as the deficit score on the comprehensive language test (i.e. if the deficit area is in the receptive component, then a test which is designed to assess receptive skills should be administered).

(c) Evaluations Required. Evaluations must be completed in the area of suspected disability as follows:

1. Articulation/Phonological Disorder.

(i) A minimum of one standardized or formal measure that assesses the child's articulation/phonological skills.

(ii) Examination of Oral Structures and Functioning.

2. Voice Disorder.

(i) A description of the child's pitch, loudness, quality, inflection, and resonance on a variety of tasks and on a minimum of two separate occasions. Assessments may sometimes require diagnostic observations over a period of several weeks.

(ii) Medical evaluation by a physician, preferably an otorhinolaryngologist (ENT), if a significant vocal deviation such as hoarseness, hypernasality, or aphonia persists. The education agency is responsible for the cost of the evaluation.

3. Fluency Disorder.

(i) A description of the child's speaking behavior in more than one speaking task and in more than one setting.

(ii) Interviews with the child, teachers, and/or parent.

(iii) A minimum of one formal measure that assesses the child's dysfluency patterns.

290-8-9-.03(11)(c)4.

290-8-9-.03(11)(d)

4. Language Disorder.

(i) A minimum of one standardized or formal comprehensive measure that assesses both receptive and expressive language skills .

(ii) After the administration of a comprehensive language test, an assessment of a specific language component (semantics, syntax, morphology, processing, phonological awareness, or pragmatics) may be administered in accordance with the Ala. Admin. Code r. 290-8-9-.03(11)(b)4.ii.

(d) The eligibility team must be able to document that the child's communication skills impair his/her participation and/or progress in the general education curriculum and/or environment.

290-8-9-.03(12)

290-8-9-.03(13)(c)2.

(12) Traumatic Brain Injury.

(a) **Definition.** Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(b) Criteria.

1. Documentation of a traumatic brain injury.
2. Evidence that the traumatic brain injury adversely affects educational performance.

(c) **Evaluations Required.** In emergency situations, professional judgment should be used to initially place the child.

1. Medical/neurological evaluation.
2. Individual educational achievement evaluation to serve as initial post-trauma baseline measure.

(13) Visual Impairment.

(a) **Definition.** Visual Impairment means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(b) Criteria.

1. Optometric/ophthalmic data indicating that the individual has a visual impairment.
2. Evidence of visual functioning that adversely affects educational performance.

(c) Evaluations Required.

1. Optometric and/or ophthalmic evaluation.
2. Documentation of educational problems that even after appropriate accommodations, the disability continues to affect educational performance.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1401(3)(A)(B), 34 CFR§300.7.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 deleted preschool caseloads from 290-8-9-.05(11) effective 1-21-91; 8-8-91 adopted 290-8-9-.05-.48ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.03-.60ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.03-.73ER effective 6-14-01; adopted ER as regular rule effective 9-13-01.

290-8-9-.04

290-8-9-.04(1)(i)1.

290-8-9-.04 Eligibility. Education agencies must develop and implement procedures to ensure that children will be properly identified.

(1) **Procedures for Determining Eligibility.** Upon completion of the evaluation, a team of qualified professionals, including the parent, must determine if a child has a disability and needs specially designed instruction. When making the determination with respect to each child, the team must:

(a) Be composed of a team of qualified professionals including the parents;
(b) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(c) Consider all evaluation information pertaining to the child, so that no single evaluation procedure will be used as the sole criterion for determining eligibility;

(d) Ensure that all evaluation information from the parents and the education agency is documented and carefully considered;

(e) Determine initial eligibility for special education services no later than sixty calendar days from the date of the receipt of the referral; and

(f) Ensure that a child not be determined to be a child with a disability if the determinant factor is a lack of instruction in reading or math, or the child has limited English proficiency and the child does not otherwise meet the eligibility criteria for a specific area of disability. Children from various ethnic groups, including speakers of regional dialects, do not have a disability solely because their manner of communicating does not conform to the expectations of the standard English speaking community. In order for a minority/limited English proficient student to be deemed eligible, the eligibility team must determine that the communication disorder exists in the child's native language and is not the result of learning English as a second language. The teaching of English as a second language or general American dialect is not the responsibility of special education.

(g) Use standard scores when determining eligibility for special education. When determining eligibility for developmental delay, there are exceptional circumstances when norm-referenced instruments cannot be administered, or if administered, the results would be invalid. In these rare circumstances, age-equivalent scores from criterion-referenced tests must be used to determine the percent of delay.

(h) Record the standard error of measurement at the .68 level of confidence with the evaluation results on the eligibility report and consider when determining eligibility for special education services. This rule does not apply when using the regression to the mean formula for determining eligibility in specific learning disabilities.

(i) For children suspected of having a specific learning disability, determine:

290-8-9-.04(1)(i)1.

290-8-9-.04(2)(c)7.

1. That the child does not achieve commensurate with his/her age and ability levels in one or more of the areas listed in Ala. Admin. Code r. 290-8-9-.04(1)(i)2., if provided with learning experiences appropriate for the child's age and ability levels.

2. That the child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (i) Oral expression,
- (ii) Listening comprehension,
- (iii) Written expression,
- (iv) Basic reading skill,
- (v) Reading comprehension,
- (vi) Mathematics calculation, and/or
- (vii) Mathematics reasoning.

3. That the severe discrepancy between ability and achievement is not primarily the result of visual; hearing, or motor impairment; mental retardation; emotional disturbance; or environmental, cultural, or economic disadvantage.

(j) Reconvene when the education agency or the parents believe that the child's eligibility should be reviewed.

(k) Determine eligibility at least every three years.

(2) **Written Report.** A report must be written each time eligibility is determined, whether initial or reevaluation, for a child with a disability that includes the evaluation information and documentation of eligibility determination.

(a) Each eligibility team member must certify in writing whether the report reflects his/her conclusion. If it does not reflect his/her conclusion, the member must submit a separate statement presenting his/her conclusions. This statement becomes a part of the child's special education record.

(b) A copy of the eligibility report, including information regarding the evaluation data, must be given to the parent.

(c) For children suspected of having a specific learning disability, the written report must also include, but not be limited to, a statement of:

- 1. Whether the child has a specific learning disability,
- 2. The basis for making the determination,
- 3. The relevant behavior noted during the observation of the child,
- 4. The relationship of that behavior to the child's academic functioning,
- 5. The educationally relevant medical findings, if any,
- 6. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services, and
- 7. The determination of the team concerning the effects of environmental, cultural, or economic factors.

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(3) **Age Requirements.** The eligibility team must consider the following children for special education services:

(a) Preschool children with disabilities are eligible to receive services on their third birthdate. Education agencies may not use public school admission cut-off dates for providing special education services. Refer to Ala. Admin. Code r. 290-8-9-.01(1)(c).

(b) Children with disabilities who have not earned an Alabama High School Diploma and who have not reached their twenty-first birthday by September 1. These children are entitled to services up to age twenty-one, even if it means that instruction is provided in excess of twelve years. If a child turns twenty-one after September 1, but during the school year, that child is entitled to complete the school year.

(4) **Eligibility for Services.**

(a) Once a child has been determined eligible for special education and related services, that child may receive any service that the IEP Team determines is required after appropriate evaluations have been completed. For example, a child may already be identified as having a specific learning disability, and at a later date, the IEP Team may determine that the child needs speech services without having to identify the child as speech/language impaired. Services and placement may not be determined or limited based on the child's disability.

(b) Education agencies must ensure that special education and related services are provided to all eligible children even though a child may be advancing from grade to grade.

(c) If a child has a disability but only needs a related service and not specially designed instruction, the child is not a child with disabilities under the Individuals with Disabilities Education Act.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 5(b), 1414(b)(4)(5)(c)(5), 1412(a)(1)(2)(3)(6), 34 CFR §300.121(e), 125(d), 534, 535, 540, 541, 543.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 amended 290-8-9-.04(4)(a) and (b) changing date to September 1, added .04(4)(d) effective 1-21-91; 8-8-91 adopted 290-8-9-.04-.47ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.04-.61ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01.

290-8-9-.05 Individualized Education Program (IEP). Education agencies must develop and implement procedures to ensure that all eligible children have an appropriate IEP based on the child's unique needs and not on the child's disability. This includes children placed in or referred to a private school or facility by the public education agency.

290-8-9-.05(1)

290-8-9-.05(2)(d)2.

(1) **Effective Dates for IEPs.** At the beginning of each school year, education agencies must have an IEP in effect for each child with a disability.

(a) An IEP must be in effect before special education and related services are provided to a child, and must be implemented as soon as possible following the IEP meeting unless the meeting occurred during the summer or a vacation period, or where there are circumstances that require a short delay (i.e., working out transportation arrangements or finding a qualified provider). There can be no delay in implementing a child's IEP while determining the payment source for providing or paying for special education and related services.

(b) Education agencies must ensure that an IEP meeting is held within thirty calendar days from the determination of initial eligibility and prior to the provision of special education services.

(c) An IEP remains in effect for a period of time not to exceed one year.

(d) Special education programs must be in operation for at least the length of the regular school term and school day unless the IEP Team specifies a different length of time based on individual needs. This rule does not apply to children in age ranges where there are no services for nondisabled peers.

(e) If a public agency other than the education agency fails to provide or pay for the special education and related services, the LEA must provide or pay for the services in a timely manner.

(2) **IEP Team Membership.** Each child's IEP Team must include the following persons:

(a) The parents of a child with a disability.

(b) At least one general education teacher of the child if the child is, or may be, participating in the general education environment. The general education teacher must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and supports for school personnel. For preschool children, this means someone who is qualified to provide preschool services to nondisabled preschool children.

(c) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child.

(d) A representative of the education agency who:

1. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities,

2. Is knowledgeable about the general curriculum, and

290-8-9-.05(2)(d)3.

290-8-9-.05(3)(b)

3. Is knowledgeable about the availability of resources of the education agency. The education agency may designate another education agency person who is a member of the IEP Team to also serve as the education agency representative.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in the Ala. Admin. Code r. 290-8-9-.05(2) (b) - (f).

(f) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise will be made by the party who invites the individual to be a member of the IEP Team.

(g) Whenever appropriate, the child with a disability.

(h) Transition Services Participants for Children Ages Fourteen and Above. In addition to the participants specified in 290-8-9-.05(2)(a) through (f), if a purpose of the meeting is the consideration of transition service needs or transition services for a child, the education agency must invite the child and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the child does not attend, the education agency must take other steps to ensure that the child's preferences and interests are considered. If an agency invited to send a representative to a meeting does not do so, the education agency must take other steps to obtain the participation of the other agency in the planning of any transition services.

(3) IEP Content. The IEP Team is responsible for reviewing all available assessment data and developing an IEP. In developing each child's IEP, the IEP Team must consider the strengths of the child and the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and, as appropriate, the results of any general State or district-wide assessments. The IEP Team does not have to repeat information in a component of the IEP that is already included in another component. All IEPs must address, at a minimum, the following content:

(a) The present level of performance of the child, including how the child's disability affects the child's involvement and progress in the general curriculum; or for preschool children, how the disability affects the child's participation in appropriate activities.

(b) A statement of measurable annual goals, including benchmarks, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities, and meeting each of the child's other educational needs that result from the child's disability.

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290-8-9-.05(3)(l)

(c) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goal(s) to be involved and progress in the general curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children.

(d) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities.

(e) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and if the IEP Team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the child; and how the child will be assessed.

(f) The projected date for the beginning of the special education services and modifications and the anticipated frequency, location, and duration of those services and modifications.

(g) A statement of how the child's progress toward the annual goal(s) will be measured; and how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goal(s) and the extent to which that progress is sufficient to enable the child to achieve the goal(s) by the end of the year.

(h) Beginning at age fourteen, and updated annually, a statement of the transition service needs that focus on the child's courses of study.

(i) Beginning at age sixteen, or younger, if determined appropriate by the IEP Team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

(j) In the case of a child whose behavior impedes his/her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

(k) In the case of a child with limited English proficiency, consider the language needs of the child as these needs relate to the child's IEP.

(l) In the case of a child who is visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media

290-8-9-.05(3)(m)

290-8-9-.05(5)(b)

(including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

(m) The communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

(n) Assistive technology devices and services that the child requires.

(o) If, in considering the special factors described in Ala. Admin. Code r. 290-8-9-.05(3)(j) - (n), the IEP Team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification), the IEP Team must include a statement to that effect in the child's IEP.

(p) Whether to include a specific methodology in the IEP is a decision that must be made by the IEP Team. All IEPs are not required to include methodology.

(q) Beginning at least one year before the child reaches the age of nineteen, a statement that the child has been informed of his/her rights under the Individuals with Disabilities Education Act that will transfer to him/her on reaching the age of majority must be included on the IEP with the child's signature and date. However, the education agency must continue to provide notice to the parents any time notice is required. Refer to Ala. Admin. Code r. 290-8-9-.08(4)(b).

(4) Access to IEPS. The child's IEP must be accessible to each general education teacher, special education teacher, related service provider, and other service provider who is responsible for implementing the IEP. In addition, each teacher and provider must be informed of his/her responsibilities related to implementing the child's IEP and the specific accommodation, modifications, and supports (i.e. training, materials, equipment) that must be provided for the child in accordance with his/her IEP.

(5) Extended School Year Services (ESY). The length of a program for a child with disabilities may not be limited to the regular school term/year if significant regression, caused by an interruption in educational services, renders it unlikely that the child will regain critical skills even after an appropriate recoument period.

(a) ESY services may not be unilaterally limited by type, amount, or duration of services, and must be based on the individual needs of the child and not by the child's disability.

(b) Consideration for ESY services is limited to the child's current IEP.

290-8-9-.05(5)(c)

290-8-9-.05(7)

(c) ESY services must provide for the maintenance of those skills identified as critical by the IEP Team and will not necessarily duplicate all of the services contained in the current IEP. Services are not to be provided simply because a child would acquire some benefit or gain new skills.

(d) ESY services must be provided only when determined by the IEP Team to be a necessary component of a free appropriate public education for the child and must not be confused with, or considered the same as, optional fee-based summer school or enrichment programs.

(e) The determination of need for ESY services is limited to a period not to exceed one year and may not address possible future educational service break needs.

(f) Education agencies are not required to create new programs as a means of providing ESY services in integrated settings if the district does not provide summer services for its nondisabled children.

(6) Interim IEPs. Under the following specific conditions, and with the written approval of the parents, an interim IEP may be developed and implemented.

(a) A child with disabilities may be placed in a program for no more than thirty days before the IEP is finalized to assist in determining the appropriate least restrictive environment. The interim IEP process includes an IEP meeting prior to the temporary placement to set conditions and timelines, and a meeting at the end of the temporary placement to finalize the IEP.

(b) When children with disabilities have transferred from another education agency in-state or out-of-state, and the receiving agency has not received the educational records to verify the child's eligibility for special education services (or the records received are incomplete), the education agency must immediately obtain temporary permission to provide special education services prior to providing special education services. Within ten calendar days after enrollment in the education agency, an interim IEP must be developed. If the education agency receives and accepts the records from an out-of-state education agency, the eligibility team must meet to determine if the out-of-state eligibility report meets Alabama criteria for one of the areas of disability. If an education agency does not receive records, they must begin the required procedural steps. The entire process must be completed within ninety calendar days from the date that the child enrolls in school.

(7) IEPs for Children with Disabilities Placed in Private Schools by Local Education Agencies (LEA). The LEA must ensure that children with disabilities who have been placed in private schools by the LEA are provided special education and related services in accordance with the child's IEP and at no cost to the parent. These children

290-8-9-.05(7)(a)

290-8-9-.05(9)(a)

must be provided an education that meets the standards that apply to education provided by the SEA and LEAs (including subpart D of the Individuals with Disabilities Education Act); and provided the rights of a child with a disability who is served by a public education agency

(a) Before the LEA places a child with disabilities in, or refers a child to a private school or facility, the LEA must initiate and conduct a meeting to develop an individualized program for the child. The LEA must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA must use other methods to ensure participation, including individual or conference telephone calls.

(b) After a child with disabilities enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility, at the discretion of the LEA.

(c) If the private school or facility initiates and conducts an IEP meeting, the LEA must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

(d) The LEA must ensure that an IEP is developed and implemented for each child with disabilities who is enrolled in a parochial or other private school and receives special education and related services.

(e) The LEA must initiate and conduct meetings to develop, review, and/or revise an IEP for a child who is enrolled in a parochial or other private school and is receiving special education services from a LEA.

(f) Even if a private school or facility implements a child's IEP, the responsibility for compliance remains with the SEA and the LEA.

(g) If the State is involved in providing direct services, the requirements in Ala. Admin. Code r. 290-8-9-.05(7)(a)-(f) must be followed.

(8) IEP Accountability. Education agencies providing special education services to a child with disabilities must provide the services in accordance with the IEP, however, the agency, teacher, or other persons who are responsible for implementing the IEP are not held accountable if a child with disabilities does not achieve the growth projected in the annual goal(s), as long as good faith efforts are made to assist the child toward achieving those goal(s).

(9) Parental Involvement in IEP Development.

(a) Each education agency must take steps to ensure that one or both of the parents of the child with disabilities are present at each IEP meeting or, are afforded the

290-8-9-.05(9)(b)

290-8-9-.05(10)(a)

opportunity to participate, including a written notification of the IEP meeting early enough to ensure their opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place.

(b) The notice specified in Ala. Admin. Code r. 290-8-9-.05(9)(a), must indicate the purpose, date, time, location of the meeting, and who will be in attendance. In addition, the notice must inform the parent that they have the right to bring other individuals who have knowledge or special expertise regarding the child. For a child with a disability beginning at age fourteen, or younger, if appropriate, the notice must indicate if a purpose of the meeting will be the development of a statement of the transition service needs of the child. For a child with a disability beginning at age sixteen, or younger, if appropriate, the notice must indicate if a purpose of the meeting is the consideration of needed transition services for a child. The notice must also indicate that the education agency will invite the child and identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, education agencies must use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the education agency is unable to convince the parents that they should attend. In this case, education agencies must have a record of at least two attempts to arrange a mutually agreed on time and document detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Education agencies must take whatever action is necessary to ensure that the parent and child understand the proceedings at the IEP meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The education agency must give the parent a copy of their child's IEP at no cost.

(10) IEP Review.

(a) Education agencies must initiate and conduct meetings to periodically review the IEP of each child with disabilities to determine whether the annual goal(s) for the child are being achieved, and, if appropriate, revise the IEP to address any lack of expected progress toward the annual goal(s) and in the general curriculum; the results of any reevaluation; information regarding the child provided to, or by, the parents; the child's anticipated needs; or other matters. A meeting must be held for this purpose at least once each year, but may be held more often if needed.

290-8-9-.05(10)(b)

290-8-9-.05(12)(a)

(b) If the parents or the child's teacher has reason to suspect that the IEP needs revision, an IEP meeting may be requested at any time. The education agency must conduct the IEP meeting within thirty calendar days upon receipt of the request.

(c) When a child with a disability transfers from one education agency to another, the receiving agency is accountable for reviewing the current IEP (if available) and determining if the current IEP is appropriate and can be implemented as written.

(d) An exit IEP Team meeting must be held before a student graduates to evaluate the accomplishment of the annual goals and the completion of all requirements for the Alabama Occupational Diploma.

(11) Exceptions to IEP Requirements for Incarcerated Individuals with Disabilities. The following requirements do not apply to the IEPs of individuals incarcerated in adult prisons:

(a) Participation in state or district-wide assessments.

(b) Transition, if the incarcerated individual's eligibility for services will end prior to their release from prison.

(c) The IEP, including the least restrictive environment of an incarcerated individual with disabilities, may be modified if the State has demonstrated a bona fide security or compelling penological interest that cannot be otherwise be accommodated.

(d) Individuals aged eighteen to twenty-one are not entitled to special education and related services if, in their last educational placement prior to incarceration they were not identified as having a disability and did not have an IEP under Part B of the Individuals with Disabilities Education Act. This does not apply to individuals aged eighteen to twenty-one who had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or did not have an IEP in their last educational setting, but who had been identified as a student with a disability in accordance with Ala. Admin. Code r. 290-8-9-.03.

(12) Agency Responsibilities for Transition.

(a) When a participating agency, other than the education agency, fails to provide agreed upon transition services contained in the individualized education program of a child with a disability, the education agency must, as soon as possible, reconvene the IEP Team to identify alternative strategies to meet the transition objectives and, if necessary, revise the child's IEP. The education agency's responsibility ends upon the child's receipt of an Alabama High School Diploma or by reaching age twenty-one. Refer to Ala. Admin. Code r. 290-8-9-.04(3)(b).

290-8-9-.05(12)(b)

290-8-9-.06(1)(a)

(b) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(13) Tape Recording IEP Meetings. The education agency may require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If an education agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process, or to implement other parental rights. If the education agency adopts a rule regulating the tape recording of IEP meetings, the agency must ensure that the policy is uniformly implemented. Any recording of an IEP meeting that is maintained by the education agency is an education record within the meaning of the Family Educational Rights and Privacy Act (FERPA) and would be subject to the confidentiality requirements of FERPA and IDEA.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1401, 1412-1414; 34 CFR §300.301, 311, 342-351, 543(b)(2).

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 07-11-89 amended 290-8-9-.06(4)(b) Extended School Year effective 8-16-89; 12-13-90 deleted 290-8-9-.06(6) and added .06(6) IEPs for Private School Children effective 1-21-91; 08-08-91 adopted 290-8-9-.06-.49ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; amended 10-12-94, effective 11-18-94; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.05-.62ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.05-.01ER(10)(d) effective 7-13-04; adopted ER as regular rule on 9-9-04 effective 10-14-04.

290-8-9-.06 Least Restrictive Environment (LRE). To the maximum extent appropriate, children with disabilities ages three to twenty-one, including children in public or private institutions or other care facilities, must be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the school that he/she would normally attend if not disabled will occur only when the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. A child with a disability cannot be removed from his age-appropriate general education classroom solely because of needed modifications in the general curriculum.

(1) LRE Determination. Education agencies must develop and implement procedures to ensure that the educational placement of a child with disabilities, including preschool children, is:

- (a) Determined at least annually,

290-8-9-.06(1)(b)

290-8-9-.06(3)(b)

- (b) Based on his/her IEP,
- (c) As close as possible to the child's home,
- (d) In the school that he/she would attend if nondisabled, unless the IEP requires some other arrangement,
- (e) Determined that there will be no potential harmful effect on the child or the quality of services that he/she needs, and
- (f) Determined by the IEP Team.

(2) **Nonacademic Settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Ala. Admin. Code r. 290-8-9-.07, education agencies must develop and implement procedures to ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate for the needs of that child. If a child with a disability is not participating in non-academic/extracurricular activities, the reason for nonparticipation must be documented on the IEP.

(3) **LRE Continuum.** Education agencies must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. There must be provisions for supplementary aids and services to be provided in conjunction with the placement in the general education class. When determining the appropriate least restrictive environment, the IEP Team must consider the following options:

(a) **Early Childhood Setting.** This environment includes children (3-5) who receive all of their special education and related services in educational programs designed primarily for children without disabilities. No special education or related services are provided in separate special education settings. This may include, but is not limited to regular kindergarten classes, public or private preschools, Head Start Centers, child care facilities, preschool classes offered to an eligible pre-kindergarten population by the public school system, home/early childhood combinations, home/Head Start combinations, and other combinations of early childhood settings.

(b) **Early Childhood Special Education Setting.** This environment includes children (3-5) who receive all their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No special education or related services are provided in early childhood settings. This may include, but is not limited to special education classrooms in regular school building; special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based setting, and special education classrooms in trailers or portables outside regular school buildings.

290-8-9-.06(3)(c)

290-8-9-.06(3)(k)

(c) Home. This environment includes children (3-5) who receive all of their special education and related services in the principal residence of the child's family or caregivers.

(d) Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting. This environment includes children (3-5) who receive services in multiple settings, such that general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to home/early childhood special education combinations; Head Start child care, nursery school facilities, hospital facilities on an outpatient basis, or other community-based settings with special education provided outside of the general education setting; regular kindergarten classes with special education provided outside of the general education setting; separate school/early childhood combinations; and residential facility/early childhood combinations.

(e) Residential Facility. This environment includes children (3-5) who receive all of their special education and related services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis.

(f) Separate School. This environment includes children (3-5) who receive all of their special education and related services in educational programs in public or private day schools specifically for children with disabilities.

(g) Zero hours per week outside of the general education setting. This environment includes children with disabilities (6-21) who receive all special education and related services in the general education setting.

(h) Less than six hours per week outside of the general education setting. This environment includes children with disabilities (6-21) who receive special education and related services outside the general education setting for less than six hours per week.

(i) Six to twenty-one hours per week outside of the general education setting. This environment includes children with disabilities (6-21) who receive special education and related services outside the general education setting for at least six but no more than twenty-one hours per week.

(j) More than twenty-one hours per week outside of the general education classroom. This environment includes children with disabilities (6-21) who receive special education and related services outside the general education setting for more than twenty-one hours per week.

(k) Public Day School. This environment includes children with disabilities (6-21) who receive special education and related services in public separate day school facilities for greater than fifty percent of the school day.

290-8-9-.06(3)(l)

290-8-9-.07

(l) Private Day School. This environment includes children with disabilities (6-21) who receive special education and related services in private separate day school facilities at public expense for greater than fifty percent of the school day.

(m) Public Residential School. This environment includes children with disabilities (6-21) who receive special education and related services in public residential facilities for greater than fifty percent of the school day.

(n) Private Residential School. This environment includes children with disabilities (6-21) who receive special education and related services in private residential facilities at public expense for greater than fifty percent of the school day.

(o) Home/Hospital Environment. This environment includes children with disabilities (6-21) who receive special education and related services in hospital or home programs.

(p) Corrections. This environment includes individuals with disabilities who receive special education and related services in short-term detention facilities (community-based or residential) or adult correctional facilities.

(q) Children Placed in Private Schools By Their Parents. This environment includes children with disabilities who have been enrolled by their parents or guardians in regular parochial or other private schools and whose basic education is paid through private resources and who receive special education and related services at public expense from a local education agency.

(4) Justification for Least Restrictive Environment (LRE). If the child's special education and related services are not provided totally in the child's home school and general education setting the child would be in if nondisabled, the reasons why must be justified on the IEP.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1412(a)(1)(5)(10)(B); 34 CFR §300.302, 550-554.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 12-13-90 added 290-8-9-.07(1)(c) through (e) and .07(2)(b)4. effective 1-21-91; 8-8-91 adopted 290-8-9-.07-.50ER effective 08-08-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, 7-13-99 adopted 290-8-9-.06-.63ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01.

290-8-9-.07 Other Educational Services and Program Options. Education agencies must take steps to ensure that children with disabilities have available the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

290-8-9-.07(1)

290-8-9-.07(3)(a)

(1) **Career/Technical Education.** Each child with disabilities must have equal opportunity to access the full range of the education agency's career/technical education programs, including occupationally specific courses of study, cooperative education, and apprenticeship programs. A representative of career/technical education must be included as a member of the IEP Team for those children with disabilities who have been referred for, or are currently receiving career/technical education. Children with disabilities must receive a vocational assessment prior to or as a part of the career/technical placement process as prescribed by the Alabama Career/Technical Education Standards for Quality Programs in Secondary Schools. The IEP of each secondary child with a disability must show any career/technical education program involvement, as well as needed modifications/adaptations made in the program. A career/technical implementation plan must be developed as part of the IEP process prior to the child entering the program if modifications are required. Refer to Ala. Admin. Code r. 290-6-1-.6(4).

(2) **Physical Education.** Children with disabilities must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full-time in a separate facility or needs specially designed physical education as determined by the IEP Team. Physical education is not required for three- and four-year old children with disabilities or for children with disabilities in grades nine through twelve (except for the one required unit) if there are no regular physical education program requirements or services for their nondisabled peers.

(a) When specially designed physical education is prescribed in a child's IEP, the education agency responsible for the education of that child must provide the services directly or make arrangements for them to be provided.

(b) The education agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services.

(c) Adapted physical education teachers employed after July 1, 1986, must be certified in physical education or special education and have completed a minimum of twelve semester or eighteen quarter hours of coursework in Adapted Physical Education. The education agency must have written documentation from a university that the adapted physical education teacher has successfully completed the required coursework.

(3) **Extracurricular Activity Participation.**

(a) Education agencies must provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics,

290-8-9-.07(3)(b)

290-8-9-.07(6)(a)3.

transportation, health services, recreational activities, special interest groups or clubs sponsored by the education agency, referrals to agencies that provide assistance to persons with disabilities and employment of children, including both employment by the education agency and assistance in making outside employment available. If a child with a disability is not participating in nonacademic/extracurricular activities, the justification for nonparticipation must be documented on the IEP.

(b) The IEP Team will identify the child's courses including supplementary aids and services. Children with disabilities, through their IEP, must be provided equal access for participation in nonacademic and extracurricular activities in accordance with Academics First. Refer to Ala. Admin. Code r. 290-3-1-.2(17).

(4) **Proper Functioning of Hearing Aids.** Education agencies must ensure that the hearing aids worn in school by children with disabilities are functioning properly.

(5) **Related Services.** Education agencies must provide special transportation and such developmental, corrective, and other supportive services as are required to assist children with disabilities to benefit from special education and to receive a free appropriate public education. All related services may not be required for each individual child. Each IEP Team must determine that related services, if any, are required to assist a child with a disability to benefit from special education. The following list of related services, while not exhaustive, must be considered: audiology, counseling services, rehabilitation counseling services, early identification and assessment of disabilities in children, medical services (for evaluation purposes only), occupational therapy, parent counseling and training, physical therapy, psychological services, recreation, therapeutic recreation, speech therapy, school health services, social work services in schools, and orientation and mobility services.

(6) **Assistive Technology.**

(a) The term assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes:

1. The evaluation of the needs of the child with disabilities, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

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290-8-9-.07(7)(d)

4. Coordinating and using other therapies, interventions, or services with assistive technology devices such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a child with disabilities, or, where appropriate, the family of a child with disabilities; and

6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or, are otherwise substantially involved in the major life functions of children with disabilities.

(b) The term assistive technology device means any item, piece of equipment or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

(c) Each education agency must ensure that assistive technology devices or services, or both, are made available to any child with a disability who requires an assistive technology device or service in order to receive a free appropriate public education. Assistive technology devices and services for children with disabilities may be provided as special education, related services, or, in the case of children with disabilities to be educated in the regular classroom, as supplementary aids and services.

(d) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the IEP Team determines that the child needs access to those devices in order to receive a free appropriate public education.

(7) Transportation for Children with Disabilities. It should be assumed that most children with disabilities receive the same transportation services as nondisabled children.

(a) Children with disabilities have the right to regular transportation services unless special transportation is required by the individualized education program.

(b) Special transportation includes travel to and from school and between schools, travel in and around school buildings, modified vehicles, additional personnel assigned to vehicles to ensure safety of the children with disabilities, or purchased services involving parents or companies who use or subcontract fleet vehicles.

(c) If transportation is provided for extracurricular activities, children with disabilities must have access to transportation whether it is regular or special.

(d) As with other related services, the education agency must provide transportation as a related service if it is required to assist a child with a disability to benefit from special education. This includes transporting a preschool-aged child to the site at which the education agency provides special education and related services, if that

290-8-9-.07(e)

290-8-9-.08(1)(b)

site is different from the site at which the child receives other preschool or day-care services.

(e) The IEP Team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children.

(f) Section 504 of the Rehabilitation Act of 1973, as amended, requires that children with disabilities receive the same transportation provided to nondisabled children. If an education agency transports nondisabled children, it must transport children with disabilities under the same terms and conditions. However, if a child's IEP Team determines that the child does not need transportation as a related service and the education agency transports only those children whose IEPs specify transportation as a related service and does not transport nondisabled children, the education agency would not be required to provide transportation to children with disabilities.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1401(1)(2)(22)(29), 1412-1413; 34 CFR §300.5, 6, 24, 28(a)(2), 305, 306, 307, 308.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 8-8-91 adopted 290-8-9-.08-.51ER effective 08-08-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.07-.64ER effective 7-13-99; adopted ER as regular rule effective 10-14-99.

290-8-9-.08 Procedural Safeguards.

(1) **Surrogate Parents.** When no parent or guardian can be identified, a child with a disability must be represented by a surrogate parent on any occasion when a parent would normally be involved in special education matters.

(a) **Determination of the Need for a Surrogate Parent.** The term parent means a natural or adoptive parent, a guardian, a person acting as a parent of the child, or a surrogate parent who has been appointed in accordance with Ala. Admin. Code r. 290-8-9-.08(1). The term does not include the State if the child is a ward of the state. A surrogate parent is needed when no parent or guardian can be identified; or the education agency, after reasonable efforts, cannot discover the whereabouts of a parent or guardian; or the child is a ward of the state. For a child who does not have a parent or guardian and is in the legal custody of the state, court, state agency or institution, and who is placed in a facility other than a foster home [Refer to Ala. Admin. Code r. 290-8-9-.11(27)], a surrogate parent must be appointed.

(b) **Surrogate Parent Appointment Procedures.** The following procedures must be utilized to ensure the right of a child with a disability to a surrogate parent:

290-8-9-.08(1)(b)1.

290-8-9-.08(1)(f)

1. Education agencies must develop written procedures for the identification of those children with disabilities who are in need of a surrogate parent and for the selection of a surrogate parent.

2. Any person who knows of a child who may need special education (or is receiving special education) and also knows or believes that no appropriate person is available to represent the child with a disability in special education matters may submit a written request to the education agency for the assignment of a surrogate parent.

3. When the education agency receives a request for the appointment of a surrogate parent, a determination must be made as to whether the child with a disability is without appropriate representation.

4. If the education agency determines that a surrogate parent is required, the superintendent of education or agency director (private and other state agencies) must appoint a surrogate parent from the education agency's pool of trained surrogate parents within ten (10) calendar days from the date the need for a surrogate parent was determined. The superintendent/agency director must provide written notification to the surrogate parent and person/agency making the request of the appointment.

5. The educational placement of the child cannot be changed prior to the participation of an assigned surrogate parent.

(c) Criteria for Selection of a Surrogate Parent.

1. Education agencies must ensure that the person selected as a surrogate parent:

(i) Is not an employee of the SEA, LEA, or any agency that is involved in the education or care of the child;

(ii) Has no interest that conflicts with the interests of the child he/she represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

2. An education agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in Ala. Admin. Code r. 290-8-9-.08(1)(c)1.(ii)(iii).

(d) A person who otherwise qualifies to be a surrogate parent is not an employee because he/she is paid by the agency to serve as a surrogate parent.

(e) Surrogate Parent Training. The education agency must ensure that Ala. Admin. Code r. 290-8-9-.08(1)(c)1.(iii) occurs by providing training to the surrogate parent.

(f) Scope of Surrogate Parent Representation. A surrogate parent may represent children with disabilities in all matters related to the identification, evaluation, educational placement, and the provision of a free appropriate public education to the child.

290-8-9-.08(1)(g)

290-8-9-.08(2)(c)2.

(g) Rescission of an Appointment. Rescission must occur when:

1. A surrogate parent notifies the superintendent of education or agency director (private or other state agency) of their resignation.
2. A surrogate parent has been unable or unwilling to perform assigned responsibilities. The surrogate parent must be notified in writing by the superintendent of education or agency director (private or other state agency).
3. A child no longer requires a surrogate parent. The surrogate parent must receive written notification from the superintendent of education or agency director (private or other state agency).

(h) Internal Monitoring of Surrogate Parent Services. Education agencies must:

1. Maintain a tracking system of children who were considered for and/or appointed a surrogate parent. The tracking system must include, but is not limited to, the child's name, social security number, disability, custody status, date surrogate requested, date request is received, date and action, surrogates' name or reason for denial, date surrogate is trained and rescission date and reason.
2. Maintain a copy of request, appointment, denial, and rescission letters.
3. Maintain a record of training for surrogate parents with the date of training, name of trainer, program content, and documentation of attendance for participants.

(2) **Records.** Information collected as part of educational records must be stored, retrieved, and utilized for the benefit of children with disabilities in a manner that will ensure confidentiality and privacy rights.

(a) Person Responsible for Records of Children with Disabilities. Education agencies must appoint one person to assume the overall responsibility for ensuring that personally identifiable information will be safeguarded and confidential. The assigned person will ensure that all agency persons involved in collecting, maintaining, or using the information will be adequately informed regarding confidentiality requirements.

(b) Storage of Records. Education agencies must ensure that the educational records of all children referred for evaluation and/or identified as disabled will be maintained in a limited access location that will ensure confidentiality.

(c) Access to Records by Parents and Their Representatives.

1. Parents may inspect and review all educational records relating to identification, evaluation, and educational placement of their child that are collected, maintained, or used by the education agency.

2. Parents must be given the opportunity to review their child's educational records without unnecessary delay (within forty-five days) and before any meeting regarding an IEP or before a due process hearing is conducted.

290-8-9-.08(2)(c)3.

290-8-9-.08(2)(d)3.(i)

3. Upon request, parents must be provided copies of their child's records, when failure to do so would effectively prevent the parents from exercising their right to access.

4. Upon request, parents must be given explanations and interpretations regarding their child's records.

5. After providing written authorization to the education agency, parents may have a representative review their child's records under the same access rights afforded to them.

6. The education agency may presume that the parents have authority to review the records of their child unless the agency has been properly advised that authority has been removed under Alabama laws governing such matters as guardianship, separation, and divorce.

7. With the exceptions of parents and authorized employees of the education agency itself, the agency must keep a record of all other persons who are given access to the educational records. Documentation must include the name of the person given access, date of access, and purpose for access.

8. When a record contains information on more than one child, the parents may review only the data regarding their child. If the data on their child cannot be isolated for review, the agency may inform the parent regarding that portion of the data that pertains to their child.

9. Upon request, the parents must be provided with a list of the types and locations of educational records collected, maintained, or used by the agency pertaining to their child.

10. The education agency may charge parents a reasonable fee for copies of the educational records, but not in an amount that would prevent them from exercising their right to access the records. The fee may not include a charge for the search or retrieval of the records.

(d) Disclosure Procedures Pertaining to Special Education Records.

1. Each education agency must maintain for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

2. Except as stated in Ala. Admin. Code r. 290-8-9-.08(2)(d)3.(i) through (vi), parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of federal, state, or local education agencies collecting or using the information in conjunction with the child's special education program.

3. Parental consent is not required as a condition for disclosure of records to:

(i) Education employees who have legitimate interests. Refer to Ala. Admin. Code r. 290-8-9-.08(2)(d)2.

290-8-9-.08(2)(d)3.(ii)

290-8-9-.08(2)(g)

(ii) Education officials of other schools, school systems, or other state agencies to which the child has enrolled or intends to enroll. Refer to Ala. Admin. Code r. 290-8-9-.08(2)(e).

(iii) Authorized state or federal officials in conjunction with monitoring or enforcement of legal requirements that relate to the special education program.

(iv) Authorities in response to a judicial order or pursuant to a legal subpoena after parents have been given notice of such order or subpoena.

(v) Appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the child or other individuals.

(vi) Law enforcement and judicial authorities when the child with a disability has committed a crime.

(e) Transfer of Records of Special Education Children.

1. Upon request from the parents, or from the education agency where the child with a disability has enrolled or intends to enroll, an education agency must transfer a copy of all special education records no later than thirty calendar days from receipt of request.

2. Parental consent is not required as a condition for a transfer of special education records from one education agency to another. However, the child's parents must be given prior notice of the transfer, receive a copy of the records (if requested), and have the opportunity for a hearing to challenge the content of the records prior to the transfer.

3. Except when the transfer of records has been initiated by the parents, the education agency transferring records must make a reasonable attempt to notify the parents prior to the transfer, i.e. written notice to the last known address or by other notice procedures normally utilized by the education agency.

(f) Amendment of Records at Parent's Request.

1. A parent who believes that the special education records are inaccurate or misleading or violate the privacy or other rights of the child may request that the education agency amend the information. The agency must decide on the matter within fifteen calendar days from receipt of request.

2. If the education agency decides to amend the records in accordance with the request, the parent must be notified in writing of the decision.

3. If the education agency decides not to amend the information in accordance with the request, written notice must be provided to the parent. The notice must advise the parent of their right to a local hearing before the education agency within fifteen calendar days from receipt of their request.

(g) Hearing to Request Amendment of Child's Educational Record.

290-8-9-.08(2)(g)1.

290-8-9-.08(2)(h)4.(i)(I)

1. If, as a result of the hearing, the education agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform the parent in writing.

2. If, as a result of the hearing, the education agency decides that the information should not be amended, the education agency must inform the parent of the right to place in the records a statement commenting on the information or setting forth reasons for disagreeing with the decision. Any such explanation will become part of the record as long as the record or contested part of the record is maintained by the education agency.

3. If the records on the contested portion are disclosed by the education agency to any party, the explanation must also be disclosed to the party.

4. The hearing must be conducted according to the procedures at 34 CFR §99.22 of the Family Educational Rights Privacy Act.

(h) Retention and Destruction of the Records of Special Education Children.

1. The education agency must retain a copy of the education records containing personally identifiable information for a period of five (5) years after the termination of the special education program for which they were used.

2. A permanent education record that contains the child's name, address, telephone number, his/her grades, record of attendance for special education services, classes attended, grade level completed, and year completed may be maintained without a time limitation.

3. At the end of the five-year retention period, the education agency must provide written notice to parents that informs them that the special education records are no longer needed. To meet the written notice requirement, education agencies may provide public notice in the newspaper which includes the years of the records that will be destroyed and the date of destruction. Individual written notice to parents in the form of a letter will also meet this requirement. The letter must also include the years of the records to be destroyed as well as the date of destruction. There must be at least ten (10) days between the written notice and the date of destruction. The parents may choose to receive the information or have it destroyed by the education agency. When the education agency is unable to locate the parents, the information no longer needed by the agency may be destroyed. The education agency is not prohibited from retaining special education records indefinitely as long as confidentiality is ensured.

4. Confidentiality of the information to be destroyed must be maintained.

(i) Disciplinary Information.

(I) The education agency must include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

290-8-9-.08(2)(h)4.(i)(II)

290-8-9-.08(4)(a)2.(iii)

(II) The statement must include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(III) If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child to the same extent that disciplinary information is transmitted with the records of nondisabled children.

(3) **Rights for Children.** Education agencies must afford to the child, rights of privacy similar to those afforded to parents regarding records taking into consideration the age of the child and type and severity of the disability. Although the rights of parents under the *Individuals with Disabilities Education Act of 1997* transfer to the student at age nineteen, the rights of parents regarding educational records under the *Family Educational Rights and Privacy Act* at 34 CFR §99.5(a) transfer to the student at age eighteen.

(4) **Parental Notice and Consent.** Special education services may not be provided to children without the parent's knowledge and informed written consent.

(a) Parental Consent.

1. Informed written consent must be obtained prior to an initial evaluation that includes the observation of a child or the administration of any test that is not administered to the child's total school, grade, or class; prior to the initial provision of special education services; or prior to any reevaluation that requires evaluations to be administered. If the parents of the child with a disability refuse consent for initial evaluation or a reevaluation that requires evaluations of the child, the education agency may continue to pursue consent by using mediation and/or due process procedures. Parents have the right to revoke consent at any time, however, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

2. Informed written consent is not required:

(i) For reevaluation, if the education agency can demonstrate that it has taken reasonable measures, (at least two attempts) to obtain that consent and the child's parents have failed to respond.

(ii) For reevaluation, if no evaluations are needed.

(iii) Before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all children, unless, before administration of that test or evaluation, consent is required of parents of all children.

290-8-9-.08(4)(a)2.(iv)

290-8-9-.08(4)(a)3.

(iv) For the type of evaluations listed on the IEP to evaluate the mastery of annual goal(s).

3. An education agency may not use a parent's refusal of informed written consent to deny the parent or child any other service, benefit, or activity of the education agency except as required by Ala. Admin. Code r. 290-8-9-.08(4)(a)1.-2.

290-8-9-.08(4)(b)

290-8-9-.08(5)(b)

(b) Parental Notice.

1. Written notice must be given to parents a reasonable time before the education agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child. Changes in placement that require prior notice include graduation from high school with a regular diploma, exiting because the age of eligibility has been reached, and a change in least restrictive environment when the parent is not in attendance at the IEP meeting. If action with regard to Ala. Admin. Code r. 290-8-9-.08(4)(b)1. is required by the education agency, no action will occur until ten calendar days after the date of the letter, unless the IEP Team, including the parent, agree otherwise.

2. The parental notice must include a full explanation of the rights in special education available to parents and children, a description of the action proposed or refused, the reason for the action, a description of any options the education agency considered and why those options were rejected, a description of each evaluation procedure, test, record, or report the education agency uses as a basis for the proposal or refusal, and a description of any other factors that are relevant to the proposal or refusal. The notice must also include a statement that the parents of a child with a disability have protection under these rights, and if this notice is not an initial referral for evaluation, the means by which a copy of the rights can be obtained, and sources for parents to contact to obtain assistance in understanding special education rights. To ensure that parents understand the content of each notice, the education agency must provide written notice in language understandable to the general public, provide notice in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so, and take the necessary steps to ensure, that when the native language or other mode of communication of the parent is not a written language, that the notice is translated orally or by other means to the parent in his/her native language or other mode of communication. Education agencies must ensure that parents understand the content of the notice and maintain written evidence that the requirements at Ala. Admin. Code r. 290-8-9-.08(4)(b) have been met.

(5) **Meetings.** Parents must be provided with an opportunity to participate in meetings regarding identification, evaluation, educational placement, and the provision of a free appropriate public education to their child.

(a) Each education agency must provide written notice prior to any meeting referenced in Ala. Admin. Code r. 290-8-9-.08(5).

(b) A meeting does not include informal or unscheduled conversations involving education agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the

290-8-9-.08(5)(c)

290-8-9-.08(7)(j)

child's IEP. A meeting also does not include preparatory activities that education agency personnel engage in to develop a proposal that will be discussed at a later meeting.

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the education agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) An educational placement decision may be made by a group without the involvement of the parents, if the education agency is unable to obtain the parents' participation in the decision. In this case, the education agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of Ala. Admin. Code r. 290-8-9-.05(8).

(e) The education agency must make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

(6) **Special Education Rights.** A copy of the special education rights available to the parents of a child with a disability must be given to the parents upon:

- (a) Initial referral for evaluation,
- (b) Each notification of an IEP meeting,
- (c) Reevaluation of the child, and
- (d) Receipt of a request for a due process hearing.

(7) **Content of Special Education Rights.** The special education rights notice must include a full explanation of all rights relating to:

- (a) Independent educational evaluation,
- (b) Prior written notice,
- (c) Parental consent,
- (d) Access to educational records,
- (e) Opportunity to request due process hearings,
- (f) The child's placement during pendency of due process proceedings,
- (g) Procedures for children who are subject to placement in an interim alternative educational setting,
- (h) Requirements for unilateral placement by parents of children in private schools at public expense,
- (i) Mediation,
- (j) Due process hearings, including requirements for disclosure of evaluation results and recommendations,

290-8-9-.08(7)(k)

290-8-9-.08(8)(a)2.(ii)

- (k) Civil actions,
- (l) State Complaint Procedures, and
- (m) Attorney fees.

(8) Due Process. Parents of children with disabilities must be provided with the opportunity to utilize appropriate administrative remedies when they believe that their rights or the rights of their children have been violated or when they disagree with their child's special education services.

(a) **Complaint Procedure.** When it is believed that the education agency is violating a federal or state law or regulation pertaining to a child's special education program, the special education complaint procedure may be utilized as the appropriate administrative remedy.

1. Procedures for Filing a Complaint with the State Department of Education.

(i) An organization or individual may file a signed written complaint and send it to the State Superintendent of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101.

(ii) An individual or agency, including an organization or individual from another State, may file a signed written complaint including the law or regulation believed to have been violated and specific facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

2. Procedures for Acting on Complaints.

(i) The State Superintendent of Education will assign a staff member to review and investigate each complaint to determine its validity. If it is determined that the complaint is a possible violation of federal or state law or regulation, the complaint will be processed.

(ii) The education agency involved must be notified by telephone or fax with a follow-up letter providing the identity of the complainant and the nature of the complaint.

290-8-9-.08(8)(a)2.(iii)

290-8-9-.08(8)(a)2.(xiii)

(iii) The education agency must submit a written resolution statement, plan of action, or statement of position to the State Superintendent of Education, Attention: Special Education Services.

(iv) Special Education Services will review the response and implement follow-up procedures to verify that the complaint has been resolved. This may include an on-site investigation.

(v) If an on-site investigation is determined to be necessary, the education agency will be notified prior to the investigation regarding the nature of the review. The investigation will be conducted by a person(s) selected by the State Superintendent of Education and will not be anyone who is employed by the agency under investigation. The person(s) conducting the investigation must have complete access to all records of the agency that pertain to the special education program.

(vi) The complainant must be given the opportunity to submit additional information, either orally or in writing, regarding the allegations of the complaint.

(vii) A written decision that addresses each allegation and contains findings of fact and conclusions and the reasons for the SEA's final decision (subject to confidentiality requirements) will be sent to the complainant.

(viii) The written decision will include procedures such as technical assistance activities, negotiations, and corrective actions to achieve compliance, if needed, for the effective implementation of the final decision.

(ix) The entire complaint process, including the letter of findings, must be completed within sixty calendar days from receipt of complaint. An extension of time may be granted when it can be established that exceptional circumstances warrant a delay.

(x) In resolving a complaint in which it has found a failure to provide appropriate services, the SEA must address how to remediate the denial of those services and appropriate future provision of services for all children with disabilities.

(xi) If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of the hearing, the SEA must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved.

(xii) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEA must inform the complainant to that effect.

(xiii) A complaint alleging an education agency's failure to implement a due process decision must be resolved by the SEA.

(b) State Education Agency Mediation Procedures. When the education agency and the parents disagree on matters pertaining to the identification, evaluation, educational placement, and/or the provision of a free appropriate public education, either party may request an impartial due process hearing to resolve the issue(s).

1. The State Superintendent of Education provides a discretionary process of mediation where the parties may resolve their differences regarding the provision of special education.

2. The procedures for mediation must ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the Individuals with Disabilities Education Act, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

3. The SEA will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators will be selected on a rotation basis from the list.

4. The SEA will bear the cost of the mediation process.

5. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

6. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

7. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

8. An individual who serves as a mediator may not be an employee of any LEA or any State agency who is providing direct services to a child who is the subject of the mediation process and must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of an education agency or State agency solely because he/she is paid by the agency to serve as a mediator.

9. An education agency may establish procedures to require parents who elect not to use the State Department of Education's mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or established under Section 682 or 683 of the Individuals with Disabilities Education Act, or an appropriate alternative dispute resolution entity, and who would explain the benefits of the mediation process and encourage the parents to use the process. The State Department of Education will not establish such procedures but will pay the designated disinterested party mileage and per diem at the state rate should an education agency establish such procedures.

290-8-9-.08(8)(b)10.

290-8-9-.08(8)(c)3.

10. An education agency may not deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting to discuss the benefits of mediation.

11. Either party may request mediation by writing to the State Superintendent of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101, or by calling (334) 242-8114 or (334) 242-8406 (TDD). A Special Education Services' staff member will contact the other parties to determine if mediation is desired.

(c) Impartial Due Process Hearing. When parents or the education agency disagree with matters pertaining to the identification, evaluation, educational placement of their child, and/or the provision of a free appropriate public education, an impartial due process hearing may be utilized as the appropriate administrative remedy. Should a hearing be requested, the education agency must inform the parents of the availability of mediation. The education agency must inform the parent of any free or low-cost legal and other relevant services in the area if the parents request the information or if the parents or education agency initiates a due process hearing.

1. Procedures for Requesting an Impartial Due Process Hearing.

(i) The parent(s), the attorney or a designated person representing the parent, or an official from the education agency may request an impartial due process hearing by writing to the State Superintendent of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101.

(ii) When the parent, or the attorney representing the parent, files a request for an impartial due process hearing, the request must include the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

(iii) The State Department of Education, Special Education Services, has a model form to assist parents in filing a request for due process. Parents may obtain a copy of this form by calling (334) 242-8114 or (334) 242-8406 (TDD).

(iv) The SEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in Ala. Admin. Code r. 290-8-9-.08(8)(c)1.(ii).

(v) The SEA must send a copy of the due process hearing request to the other party involved in the hearing.

2. The Appointment of an Impartial Due Process Hearing Officer. This appointment must be made by the State Superintendent of Education.

3. Qualifications of Impartial Due Process Hearing Officers. A hearing may not be conducted by a person who is an employee of the education agency that is directly involved in the education or care of the child, or by any person having a personal or professional interest that would conflict with his/her objectivity in a hearing. A person

290-8-9-.08(8)(c)4.

290-8-9-.08(8)(c)5.(iii)

who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he/she is paid by the agency to serve as an impartial due process hearing officer.

4. Impartial Due Process Hearing Rights for Parents and Education Agencies.

Any party to a hearing has the right to:

(i) Be accompanied and advised by counsel and/or individuals who have knowledge or training with respect to children with disabilities.

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days prior to the hearing.

(iv) Obtain a written or an electronic verbatim record of the hearing.

(v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

(vi) Have, at least five business days prior to a hearing, all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An impartial due process hearing officer may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(vii) Have, at least five business days before the hearing, a list of potential witnesses that the other parties intend to use at the hearing.

5. Parents' Responsibility in Impartial Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) Request an impartial due process hearing that pertains to the identification, evaluation, educational placement, and/or the provision of a free appropriate public education unless it has already been requested by the education agency.

(II) Determine the witnesses who can provide relevant information at the hearing and request their attendance. Each party is responsible for the attendance of its witnesses.

(III) Cooperate with the Impartial Due Process Hearing Officer in planning for a location, date, and time for the hearing.

(IV) Send a list of potential witnesses to the designated Impartial Due Process Hearing Officer. Do not send a copy of the evidence.

(V) Inform the Impartial Due Process Hearing Officer regarding their decision pertaining to the child's presence at the hearing and to opening the hearing to the public.

(ii) Hearing Activities. Present their case at the hearing.

(iii) Posthearing Activities. Comply with the Impartial Due Process Hearing Officer's decision or appeal within specified time limits. Refer to Ala. Admin. Code r. 290-8-9-.08 (8)(c)11. and 12.

290-8-9-.08(8)(c)6.

290-8-9-.08(8)(c)7.(ii)

6. Education Agency's Responsibility in Impartial Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) State a justifiable reason for requesting a hearing.

(II) Request an impartial due process hearing unless one has already been requested by the parents.

(III) Inform the parents of any free or low-cost legal and other relevant services available in the area.

(IV) Provide the parents with a complete copy of the *Special Education Rights*.

(V) Keep a list of those persons who are qualified to serve as Impartial Due Process Hearing Officers including a statement of their qualifications.

(VI) Determine the witnesses who can provide relevant information at the hearing and request their attendance at the hearing. Each party is responsible for the attendance of its witnesses.

(VII) Make the child's education records available to the parent(s) and/or their designated representatives, upon request.

(VIII) Cooperate with the Impartial Due Process Hearing Officer in planning for a location, date, and time for the hearing.

(IX) Send a list of potential witnesses to the Impartial Due Process Hearing Officer. Do not send a copy of the evidence.

(ii) Hearing Activities.

(I) Assume the burden of proof regarding the appropriateness of services proposed or provided.

(II) Present the case at the hearing.

(iii) Posthearing Activities. Comply with the Impartial Due Process Officer's decision or appeal within specified time limits. Refer to 290-8-9-.08(8)(c)10.(i) 11. and 12.

7. State Department of Education's Responsibility in Impartial Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) Ensure that the issue(s) is one that pertains to the identification, evaluation, educational placement, and/or the provision of a free appropriate education prior to assigning an Impartial Due Process Hearing Officer.

(II) Appoint a qualified Impartial Due Process Hearing Officer.

(III) Provide for a qualified court reporter to make an official transcript of the hearing. Upon request, copies will be provided to the parties.

(IV) Arrange for an interpreter, as needed.

(ii) Posthearing Activities.

290-8-9-.08(8)(c)7.(ii)(I)

290-8-9-.08(8)(c)8.(i)(XIII)

(I) Ensure that not later than forty-five calendar days after the receipt of the request for a hearing, a final decision is reached and a copy of the decision is mailed to each of the parties.

(II) Maintain comprehensive tracking and filing regarding each impartial due process hearing to include, but not be limited to, all written correspondence, evidence, decisions, and transcripts.

(III) Transmit impartial due process hearing findings and decisions, after deleting any personally identifiable information, to the Special Education Advisory Panel.

(IV) Provide for payment of the Impartial Due Process Hearing Officer, court reporter, and interpreter.

(V) Make findings and decisions available to the public, subject to confidentiality requirements.

8. Impartial Due Process Hearing Officer's Responsibility in Hearings.

(i) Prehearing Activities.

(I) Notify Special Education Services of all interim or final rulings or orders affecting the hearing. This includes, but is not limited to, continuances, settlements, or specific extensions of timelines.

(II) Inform the party(ies) of his/her appointment as the Impartial Due Process Hearing Officer.

(III) Establish a date, time, and location for the hearing that is reasonably convenient to the parent(s) and child involved.

(IV) Establish a date, at least five business days prior to the hearing, for a prehearing telephone conference to identify the specific issues to be addressed in the hearing.

(V) Determine if the child will attend the hearing (parental choice).

(VI) Determine if the hearing will be open to the public (parental choice).

(VII) Ensure that parents have been provided with a copy of the *Special Education Rights*.

(VIII) Ensure that the parties understand their rights pertaining to the hearing.

(IX) Utilize written correspondence to notify the parties of hearing procedures and schedules. Initial telephone calls must be followed by written notification.

(X) Obtain a list of representatives and witnesses from the parties at least five business days prior to the hearing.

(XI) Ensure that the parties have disclosed evidence to each other at least five business days prior to the hearing.

(XII) Inform the parties regarding the format of the hearing.

(XIII) Advise the parties of the confidential nature of the proceedings.

290-8-9-.08(8)(c)8.(i)(XIV)

290-8-9-.08(8)(c)8.(iii)(IV)II.B.

(XIV) Determine if witnesses should be excluded from the hearing room. This may be requested by either party.

(XV) Make sure that the physical arrangement of the hearing room is appropriate.

(XVI) Provide the parties involved written notice of any specific extensions beyond the forty-five calendar-day timeline.

(XVII) Make such rulings as necessary to conduct the hearings.

(ii) Hearing Activities. The Impartial Due Process Hearing Officer will conduct the hearing as outlined below:

(I) Call to order.

(II) Opening statement by the Impartial Due Process Hearing Officer.

(III) Introductions of himself/herself and principal parties.

(IV) Statement of opened or closed hearing.

(V) Explanation of procedural matters.

(VI) Statement of issue(s) and purpose.

(VII) Swearing in witnesses.

(VIII) Exclusion of witnesses, if requested by either party.

(iii) Presentation of formal testimony.

(I) Explanation of format for presentation of evidence.

(II) Opportunity for opening statements by all of the principal parties. This is not part of the evidence and will not be considered in the decision.

(III) Presentation of written evidence by petitioner followed by the respondent. The written evidence may be presented all together or as needed during the oral testimony. The Impartial Due Process Hearing Officer will mark each document for identification purposes and must return all exhibits entered into evidence to Special Education Services.

(IV) Presentation of oral testimony by petitioner followed by the respondent. Each witness must identify himself/herself by stating the name, address, position, and relationship to the child. Oral testimony will be taken in the following order:

I. Petitioner's Witnesses.

A. Examination by petitioner.

B. Cross-examination by respondent.

C. Reexamination by petitioner.

D. Recross-examination by respondent.

E. Further examination allowed at the Impartial Due Process Hearing Officer's discretion.

F. Questions by Impartial Due Process Hearing Officer.

II. Respondent's Witnesses.

A. Examination by respondent.

B. Cross-examination by petitioner.

290-8-9-.08(8)(c)8.(iii)(IV)II.C.

290-8-9-.08(8)(c)8.(iv)(I)IX.

- C. Reexamination by respondent.
- D. Recross-examination by petitioner.
- E. Further examination allowed at the Impartial Due Process Hearing Officer's discretion.
- F. Questions by Impartial Due Process Hearing Officer.
- (V) General Procedures Pertaining to the Hearing.
 - I. Only a principal party or designated representative may question witnesses.
 - II. The Impartial Due Process Hearing Officer may dismiss witnesses when it has been determined that neither party has further need for them.
 - III. The Impartial Due Process Hearing Officer may stop unnecessarily hostile or irrelevant pursuits in questioning.
 - IV. If a principal party fails to appear, the Impartial Due Process Hearing Officer may hold the hearing after noting in the record that proper notice was provided, or the hearing may be adjourned or postponed.
 - V. If a witness fails to appear, the impartial due process hearing can proceed with a notation in the record. If the evidence from the witness is required, it may be taken at a later date. The impartial due process hearing may be reconvened at a later time to obtain the testimony.
 - VI. Written evidence provided by a witness who does not appear may be accepted as fact if the other party agrees.
 - VII. Summary statements by the petitioner will be followed by the respondent. This is not part of the evidence and will not be considered in the decision.
- (VI) Closing statements by the Hearing Officer.
 - I. When decision can be expected.
 - II. Availability of the record of the hearing.
 - III. Appeal procedures.
- (iv) Posthearing Activities.
 - (I) Include in the decision.
 - I. Procedural history.
 - II. Statement of the facts.
 - III. Issues presented.
 - IV. Discussion of issues.
 - V. Conclusions.
 - VI. List of all documents introduced as exhibits.
 - VII. Order.
 - VIII. Appeal rights, including time limits on the filing of an appeal.
 - IX. Such matters deemed necessary by the Impartial Due Process Hearing Officer to implement the decision.

290-8-9-.08(8)(c)8.(iv)(II).

290-8-9-.08(8)(c)10.(iii)

(II) Send copies of the written decision to all parties and to the State Superintendent of Education, Attention: Special Education Services.

(III) Submit all correspondence, evidence or any other information collected during the hearing to the State Superintendent of Education, Attention: Special Education Services, for filing and safeguarding.

(v) Extension of Timelines. At the request of either party, the Impartial Due Process Hearing Officer may grant extensions for specific amounts of time beyond the periods set for impartial due process hearings. Documentation of extensions must be submitted to the Department of Education, Special Education Services.

9. Child's Status During Impartial Due Process Hearing Procedures. Subsequent to a request and during the pendency of any administrative or judicial proceedings, the child involved must remain in his/her educational placement unless the parents and education agency agree otherwise. If the issue involves an application for initial admission to school, the child, with the consent of the parents, must be placed in the school program until the completion of all the proceedings. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others. If the decision of a due process hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between education agency and the parents during the proceedings.

10. Follow-up of Impartial Due Process Hearing Decisions by the State Education Agency.

(i) Not later than thirty calendar days from the receipt of the impartial due process hearing officer's written decision, the education agency must provide the State Education Agency with written notice as to the education agency's intended response to those agency actions ordered by the Impartial Due Process Hearing Officer.

(ii) The State Education Agency will review the written notice of intent and implement appropriate follow-up procedures to verify that all proper actions have been completed. These verification procedures must be completed within a reasonable amount of time and may include an on-site investigation, if determined necessary.

(iii) If an on-site investigation is determined necessary, the education agency will be notified prior to the on-site investigation regarding the nature of the review. The investigation will be conducted by a person(s) selected by the State Superintendent of Education and will not be anyone who is employed by the agency under investigation. The person(s) conducting the investigation must have complete access to all records of the agency that pertain to the special education program. After the on-site investigation, a letter of finding must be sent to the education agency superintendent or director.

290-8-9-.08(8)(c)11.

290-8-9-.08(8)(c)13.(iv)(I)

11. Civil Action. The decision made by the Impartial Due Process Hearing Officer is final unless a party brings civil action pursuant to 20 U.S.C. Section 1415(e)(2). In any action brought under Ala. Admin. Code r. 290-8-9-.08(8)(i)(I) and (iv) (I), the court shall receive the records of the administrative proceedings; shall hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, shall grant the relief that the court deems to be appropriate.

12. Timeline for Filing Civil Action. An aggrieved party must file a notice of intent to file a civil action with all parties to the impartial due process hearing within thirty (30) calendar days upon receipt of the decision of the Impartial Due Process Hearing Officer. A civil action in a court of competent jurisdiction must be filed within thirty (30) days of the filing of the notice of intent to file a civil action.

13. Attorney's Fees. Education agencies must inform parents that in any action or proceeding under Ala. Admin. Code r. 290-8-9-.08(8)(c), that courts may award reasonable attorney's fees. Part B funds may not be used to pay attorney fees or costs of a party related to an action or proceeding related to a due process hearing. This includes depositions, expert witnesses, and settlement agreements. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees.

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding related to a due process hearing for services performed subsequent to the time of a written offer of settlement to a parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than ten days before the proceeding begins the offer is not accepted within ten days; and the court or due process hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action. Attorney's fees may not be awarded for mediation that is conducted prior to the request for a due process hearing.

(iii) An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(iv) The court may reduce the amount of attorneys' fees awarded if the court finds that:

(I) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

290-8-9-.08(8)(c)13.(iv)(II)

290-8-9-.08(8)(c)13.(iv)(III)

(II) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(III) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

290-8-9-.08(8)(c)13.(iv)(IV)

290-8-9-.08(10)(c)

(IV) The attorney representing the parent did not provide to the school district the appropriate information in the request for the impartial due process hearing in accordance with Ala. Admin. Code r. 290-8-9-.08(8)(c)1.(ii).

(V) The provisions of this section do not apply in any action or proceeding if the court finds that the State or education agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of IDEA.

(9) Transfer of Parental Rights at Age of Majority (19). The education agency must provide notice to both the child and the parents that all rights afforded to parents under Part B of the Act transfer to the child at age nineteen, and that all rights afforded to parents under part B of the Act transfer to children at age nineteen who are incarcerated in an adult or juvenile, State, or local correctional institution. Education agencies must continue to provide a copy of all notices sent to the child to the parent.

(10) Withholding of Funds. When an education agency has failed to provide appropriate educational services to children with disabilities as specified by corrective action, formal complaint resolution, due process hearing order, LEA Plan, or state and/or federal law and regulations, the State Superintendent of Education will invoke the following procedures to withhold the education agency's federal special education funds.

(a) If the education agency does not complete the action within the established timeline, the State Superintendent of Education will notify the education agency of the State Superintendent of Education's intent to withhold all federal special education funds because of the education agency's failure to provide appropriate educational services to the children with disabilities. This notice must also include notification that the education agency may request a hearing before the State Superintendent of Education or his designee in order to address the allegations of failure to provide appropriate educational services to children with disabilities. This hearing must be requested within ten working days of the education agency's receipt of this notification.

(b) A decision of the State Superintendent of Education or designee will be mailed to the education agency within ten working days of the hearing. If the decision rules against the agency, the education agency must be notified that all federal special education funds will be withheld after a period of ten working days from receipt of the decision. Money will be withheld until the education agency is in compliance.

(c) Within thirty calendar days, any education agency having funds withheld must inform the public within the education agency's jurisdiction of the pendency of the action. The notice must be a public notice. Failure by the education agency to do so will result in the State Superintendent of Education informing the public of the action.

290-8-9-.08(10)(d)

290-8-9-.09(1)(b)

(d) If the education agency disagrees with the decision of the State Superintendent of Education, or his designee, the education agency can refer the matter to the United States Secretary of Education.

(11) Resolution of Agency Complaints Against the SEA. The SEA ensures that each local education agency or other state agency aggrieved by activities conducted by the SEA to ensure implementation of 20 U.S.C. 1400 et seq. will have the benefit of the procedures contained in 34 CFR §76.783; 34 CFR §76.401(c) through (d), for requesting a review and investigation of allegation of substance.

Author: Ed Richardson

Statutory Authority: 20. U.S.C. 1401(19), 1412(a)(8), 1413(j), 1414(a)(b)(c)(f), 1415, 1417(c); 34 CFR §300.501, 503, 517, 560-577.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 7-11-89 amended 290-8-9-.09(4)(c)16. Due Process and 290-8-9-.09(5) Suspension/Expulsion effective 8-16-89; 12-13-90 added 290-8-9-.09(2)(f)4., renumbered .09(2)(c)17. to .09(2)(c)18. and added .09(2)(c)17. Through (III) effective 1-21-91; 8-8-91 adopted 290-8-9-.09-.52ER effective 8-8-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; amended 10-13-94, effective 11-18-94; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.08-.65ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.08ER effective 6-14-01; adopted ER as regular rule effective 9-13-01.

290-8-9-.09 Discipline Procedures. When there is agreement between school personnel and the child's parents regarding a change in placement for disciplinary reasons, there is no requirement to implement the discipline provisions in the Ala. Admin. Code r. 290-8-9-.09.

(1) Free Appropriate Public Education (FAPE) for Children Suspended or Expelled from School.

(a) An education agency is not required to provide services to a child with a disability who has been removed from his/her current placement for a violation of school rules for ten school days or less in a school year, if services are not provided to a nondisabled child who has been similarly removed.

(b) If a child with a disability has already been removed for ten school days in a school year and is to be removed for another incident for a violation of school rules of less than ten consecutive school days that does not constitute a change of placement or for a behavior that is not a manifestation of the child's disability, school personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

290-8-9-.09(1)(c)

290-8-9-.09(3)(a)2.(i)

(c) Portions of a school day that a child is suspended must be included in determining whether the child has been removed for more than ten cumulative school days or subjected to a change of placement.

(2) **Change of Placement for Disciplinary Removals.** A change of placement occurs if:

(a) The removal is for more than ten consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. Whether a pattern of removals constitutes a change of placement would be determined on a case-by-case basis by the education agency and is subject to review through due process.

(3) **Authority of School Personnel.**

(a) School personnel may order:

1. To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement as defined in Ala. Admin. Code r. 290-8-9-.09(2). However, school personnel may not use their ability to suspend a child for ten days or less at a time on multiple occasions in a school year as a means of avoiding appropriately considering and addressing the child's behavior as part of the IEP. After a child with a disability has been removed from his/her current placement for more than ten school days in the same school year, during any subsequent days of removal the education agency must provide services to the extent required in Ala. Admin. Code r. 290-8-9-.09(1)(b).

2. A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five calendar days, if:

(i) The child is found to have a weapon at school or at a school function under the jurisdiction of a State or an education agency; or

290-8-9-.09(3)(a)2.(ii)

290-8-9-.09(4)(a)3.

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b) Either before or not later than ten business days after either first removing the child for more than ten school days in a school year or commencing a removal that constitutes a change of placement as defined in Ala. Admin. Code r. 290-8-9-.09(2):

1. If the education agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal, the agency must convene an IEP meeting to develop an assessment plan.

2. If the child already has a behavioral intervention plan, the IEP Team must meet to review the plan and its implementation, and, modify the plan and its implementation, as necessary, to address the behavior.

3. As soon as practical after developing the plan and completing the assessments required by the plan, the education agency must convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and must implement those interventions.

4. If subsequently a child with a disability who has a behavioral intervention plan and who has been removed from the his/her current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP Team members must review the behavioral intervention plan and its implementation to determine if modifications are necessary.

5. If one or more of the IEP Team members believe that modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team determines necessary.

(4) Authority of Due Process Hearing Officer.

(a) A due process hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five calendar days if the due process hearing officer, in an expedited due process hearing,:

1. Determines that the education agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

2. Considers the appropriateness of the child's current placement;

3. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

290-8-9-.09(4)(a)4.

290-8-9-.09(6)(b)

4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of Ala. Admin. Code r. 290-8-9-.09(5)(b).

(b) An education agency may also seek to obtain a court order to remove a child with disabilities from school or to change a child's current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or others.

(5) Determination of Setting.

(a) When a child with a disability is found to have a weapon at school or a school function or knowingly possesses, uses, sells or solicits illegal drugs or controlled substances, the interim alternative educational setting must be determined by the IEP Team.

(b) Any alternative setting in which a child with a disability is placed, either by the IEP Team or a hearing officer, must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and include services and modifications to address the behavior that are designed to prevent the behavior from recurring.

(6) Manifestation Determination Review.

(a) If an action is contemplated regarding behavior described in Ala. Admin. Code r. 290-8-9-.09(3)(a)2. or 290-8-9-.09(4), or involving a removal that constitutes a change of placement as described in Ala. Admin. Code r. 290-8-9-.09(2) for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the education agency that applies to all children, the education agency must:

1. Not later than the date on which the decision to take that action is made, the parents must be notified of that decision in accordance with the requirements in Ala. Admin. Code r. 290-8-9-.08(4)(b) and provided the procedural safeguards, and

2. Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) The manifestation determination review must be conducted by the IEP Team and other qualified personnel in a meeting.

290-8-9-.09(6)(c)

290-8-9-.09(7)(c)

(c) The IEP Team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP Team and other qualified personnel:

1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child, observations of the child, and the child's IEP and placement.

2. Determine in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement.

3. Determine that the child's disability did not impair the ability of the child to control the behavior or to understand the impact and consequences of the behavior subject to disciplinary action.

(d) If the IEP Team and other qualified personnel determine that either of the standards in Ala. Admin. Code r. 290-8-9-.09(6)(c)2. and 3. are not met, the behavior must be considered a manifestation of the child's disability.

(e) The manifestation determination review can be done at the same IEP meeting as required in Ala. Admin. Code r. 290-8-9-.09(3)(b)

(f) If deficiencies in the child's IEP or placement or in their implementation are identified, immediate steps to remedy those deficiencies must be taken.

(7) Determination That Behavior Was Not a Manifestation of the Disability.

(a) If the result of the manifestation review was that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities except as indicated in Ala. Admin. Code r. 290-8-9-.09(1).

(b) If the education agency initiates disciplinary procedures applicable to all children, the education agency must ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) For a change in placement regarding behavior that is not a manifestation of the child's disability, the child's IEP Team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

290-8-9-.09(7)(d)

290-8-9-.09(9)(c)1.

(d) Except as provided in Ala. Admin. Code r. 290-8-9-.09(8), the due process procedures in Ala. Admin. Code r. 290-8-9-.08(8)(c) apply when a parent disagrees with the IEP Team's determination that the behavior was not a manifestation of the disability.

(8) Parent Appeal.

(a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding a change in placement due to a disciplinary action, the parent may request a hearing.

(b) The State must arrange for an expedited hearing if the hearing is requested by a parent.

(c) In reviewing a decision with respect to the manifestation determination, the due process hearing officer must determine whether the education agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Ala. Admin. Code r. 290-8-9-.09(6)(c)(d). In reviewing a decision under Ala. Admin. Code r. 290-8-9-.09(3)(a)2. to place the child in an interim alternative educational setting, the hearing officer must apply the standards in Ala. Admin. Code r. 290-8-9-.09(4).

(9) Placement During Appeals.

(a) If a parent requests a hearing regarding a disciplinary action described in Ala. Admin. Code r. 290-8-9-.09(3)(a)2. or (4), to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Ala. Admin. Code r. 290-8-9-.09(3)(a)2. or (4), whichever occurs first, unless the parent and the education agency agree otherwise.

(b) If a child is placed in an interim alternative educational setting pursuant to Ala. Admin. Code r. 290-8-9-.09(3)(a)2. or (4), and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in Ala. Admin. Code r. 290-8-9-.09(9)(c).

(c) Expedited Hearing.

1. If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process hearing proceedings, the education agency may request an expedited due process hearing.

290-8-9-.09(9)(c)2.

290-8-9-.09(10)(c)2.

2. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer must apply the standards in Ala. Admin. Code r. 290-8-9-.09(4).

3. A placement ordered pursuant to Ala. Admin. Code r. 290-8-9-.09(9)(c)2. may not be longer than forty-five calendar days.

4. The procedures in Ala. Admin. Code r. 290-8-9-.09(9)(c)1. - 3. may be repeated as often as deemed necessary by the education agency.

(10) Protections for Children Not Yet Eligible for Special Education and Related Services.

(a) A child who has not been determined to be eligible for special education services and who has engaged in behavior that violated any rule or code of conduct of the education agency including any behavior described in Ala. Admin. Code r. 290-8-9-.09(3)(4), may assert any of the protections provided for in this part if the education agency has knowledge as determined in accordance Ala. Admin. Code r. 290-8-9-.09(10)(b) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) The education agency must be deemed to have knowledge that a child is a child with a disability if:

1. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

2. The behavior or performance of the child demonstrates the need for these services,

3. The parent of the child has requested an evaluation of the child, or

4. The teacher of the child, or other personnel of the education agency, has expressed concern about the behavior or performance of the child to the director of special education or to other education personnel in accordance with the education agency's Child Find procedures.

(c) An education agency would not be deemed to have knowledge if, as a result of receiving the information specified, the education agency:

1. Conducted an evaluation and determined that the child was not a child with a disability, or determined that an evaluation was not necessary; and

2. Provided notice to the child's parents of its determination.

290-8-9-.09(10)(d)

290-8-9-.09(13)

(d) If an education agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors. If a request is made for an evaluation of a child during the time period that the child is subjected to disciplinary measures under Ala. Admin. Code r. 290-8-9-.09(3)(4), the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, that can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the education agency and information provided by the parents, the education agency must provide special education and related services.

(11) Expedited Due Process Hearings.

(a) The parent's right to an expedited due process hearing is limited to disciplinary situations involving a change in placement.

(b) A decision by the hearing officer must be reached within forty-five calendar days of the request for the hearing. There must be no exceptions or extensions.

(c) The hearing must be conducted by an Impartial Due Process Hearing Officer who satisfies the requirements of Ala. Admin. Code r. 290-8-9-.08(7)(c)3.

(d) The decisions in expedited due process hearings are appealable under the State's normal due process appeal procedures in Ala. Admin. Code r. 290-8-9-.08(c)11.

(12) Referral To and Action by Law Enforcement and Judicial Authorities.

(a) Nothing in this part prohibits an education agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) An education agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(c) An education agency reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(13) Bus Suspension. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a

290-8-9-.09(14)

290-8-9-.10(1)(b)

suspension unless the education agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where all other services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension would not be a suspension. In those cases, the child and his/her parents would have the same obligations to get the child to and from school as a nondisabled child who had been suspended from the bus. However, education agencies must address whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether bus behavior should be addressed in the IEP or behavioral intervention plan for the child.

(14) In-school Suspension. An in-school suspension would not be considered a day of suspension as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified on his/her IEP and continue to participate with nondisabled children to the extent they would have in their current placement.

Author: Ed Richardson

Statutory Authority: 20 U.S.C. 1415; 34 CFR §300.519-529.

History: New 7-13-99 adopted 290-8-9-.09-.66ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01.

290-8-9-.10 Administration. Each education agency must develop and implement procedures that will ensure that children with disabilities in the age range from three to twenty-one are provided a free appropriate public education.

(1) Residency. For children with disabilities who are not residing with their parents or who are enrolled in a program outside the jurisdiction of their residence, the following rules apply.

(a) For children with disabilities who have been determined to be wards of the state or who reside in group homes, detention facilities, nursing homes, and private facilities, it is the responsibility of the local education agency where the facility is located to ensure that special education and related services are provided. Local education agencies are not responsible for providing special education services to students with disabilities who are incarcerated in adult correctional facilities under the Department of Corrections.

(b) The local education agency where the child with disabilities resides is responsible for providing special education services. However, should a parent unilaterally place their child in a day-care center or other program outside of the jurisdiction of residence, the local education agency of residence is not responsible for providing special education services if appropriate services are available in the local education agency of residence. If the local education agency where the parent unilaterally placed the child has a policy of accepting children from outside their jurisdiction, they

290-8-9-.10(2)

290-8-9-.10(6)(c)

would be responsible for providing special education services to these children. If not, these children would not be entitled to receive special education services. Refer to Ala. Admin. Code r. 290-8-9-.10(7) for specific requirements relating to children unilaterally placed in private schools by their parents.

(2) **School Psychometrist.** A school psychometrist must be certified in School Psychometry and/or listed in the Alabama Roster of Approved Psychologists and Psychometrists for Testing Children Referred for Placement in Special Education Classes (1983 Edition).

(3) **Forms.** Education agencies must utilize all forms required by the State Department of Education.

(4) **Education Agency Plan.** Education agencies must develop, according to state and federal requirements, a written plan for providing special education and related services.

(5) **Program Review.** All education agencies that serve children under the Individuals with Disabilities Education Act and the Ala. Code Title 16, Chapter 39, will have their programs reviewed by the state education agency to determine compliance with federal and state laws and regulations regarding special education programs.

(6) **Children in Private Schools Placed by Parents if FAPE is an Issue.**

(a) General. An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the LEA must include these children in the population whose needs are addressed consistent with Ala. Admin. Code r. 290-8-9-.10(6)(7).

(b) Disagreements Regarding FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures in Ala. Admin. Code r. 290-8-9-.08(a)-(c), and Ala. Admin. Code r. 290-8-9-.02(3).

(c) Reimbursement for Private School Placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private

290-8-9-.10(6)(d)

290-8-9-.10(7)(a)

placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEA.

(d) **Limitation on Reimbursement.** The cost of reimbursement may be reduced or denied if:

1. At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the proposed action.

2. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Ala. Admin. Code r. 290-8-9-.08(4), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

3. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Notwithstanding the notice requirement in Ala. Admin. Code r. 290-8-9-.10(6)(d)1., the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

1. The parent is illiterate and cannot write in English.
2. It would likely result in physical or serious emotional harm to the child;
3. The school prevented the parent from providing the notice, or
4. The parents had not received notice, as required by the Ala. Admin. Code r. 290-8-9-.08(4), of the notice requirement at Ala. Admin. Code r. 290-8-9-.10(6)(d)1.

(7) Children with Disabilities Enrolled by Parents in Private Schools Within the Education Agency's Jurisdiction. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act by providing them with special education and related services in accordance with Ala. Admin. Code r. 290-8-9-.10(7).

(a) Each LEA must consult with representatives of private schools in a timely and meaningful way to decide which children will receive services, what services will be provided, how and where the services will be provided, and how the services provided will be evaluated. Each LEA must give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding services that will

290-8-9-.10(7)(b)

290-8-9-.10(7)(h)

be provided. The consultation must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services. However, the LEA has the authority to make the final decisions with respect to the services to be provided to eligible private school children.

(b) The services provided private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(c) There is no requirement that a child with disabilities in a private school receive the same amount of service the child would receive if the child attended public schools.

(d) No private school child with a disability is entitled to any service or to any amount of services the child would receive if enrolled in a public school.

(e) Each private school child with a disability who has been designated to receive services in accordance with Ala. Admin. Code r. 292-8-9-.10(7)(a) must have a service plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined through the process described in Ala. Admin. Code r. 290-8-9-.10(7)(a)(i). The service plan must, to the extent appropriate, meet the IEP requirements in Ala. Admin. Code r. 290-8-9-.05, and be developed, reviewed, and revised in accordance with the requirements in Ala. Admin. Code r. 290-8-9-.05(9)(10). The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the private or religious school, including individual or conference calls.

(f) If necessary for a child to benefit from or participate in the services provided, transportation must be provided from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. However, LEAs are not required to provide transportation from the child's home to the private school. The cost of that transportation may be included in the total amount of money that the LEA is required to spend on services for the school year.

(g) Services may be provided at the child's private school, including a religious school.

(h) Parents may not request a due process hearing regarding the requirements in Ala. Admin. Code r. 290-8-9-.10(7), including the provisions of the child's service plan, but may file on issues regarding the Child Find requirements regarding identification and evaluation. However, a parent may file a complaint that if they believe that the LEA has not met the requirements included in Ala. Admin. Code r. 290-8-9-.10(7).

290-8-9-.10(7)(i)

290-8-9-.10(7)(i)

(i) Each LEA must consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities. The LEA must spend during the current year, the amount of funds that would be generated by the number of eligible children as of the prior year's December 1 Child Count. To meet the requirements of 34 CFR §300.452(a), each local education agency must spend on providing special education and related services to private school children with disabilities: (for children aged 3 through 5), an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5; and (for children aged 3 through 21), an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

290-8-9-.10(7)(j)

290-8-9-.10(8)(a)

(j) A local education agency may not use Part B and C funds for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site and the classes include children enrolled in public schools and children enrolled in private schools.

(k) A local education agency may not use Part B and C funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local education agency must use program funds to meet the special education and related services needs of children enrolled in private schools rather than the needs of a private school or the general needs of the children enrolled in a private school.

(l) A local education agency may use program funds to make public personnel available in nonpublic facilities to the extent necessary to provide equitable program benefits designed for children enrolled in a private school, and if those benefits are not normally provided by the private school.

(m) A local education agency may use Part B and C funds to pay for the services of an employee of a private school if the employee performs the services outside of his/her regular hours of duty, and the employee performs the services under public supervision and control.

(n) The local education agency must keep title to and exercise continuing administrative control of all equipment and supplies that the local education agency acquires with Part B and C funds. The local education agency may place equipment and supplies in a private school for the period of time needed for the program. The local education agency must ensure that the equipment or supplies placed in a private school are used only for the purposes of serving children with disabilities and can be removed from the private school without remodeling the private school facility. The LEA must remove equipment or supplies from a private school if the equipment or supplies are no longer needed for the purposes of the program, or removal is necessary to avoid use of equipment or supplies for other than program purposes.

(o) A local education agency must ensure that Part B and C funds are not used for repairs, minor remodeling, or the construction of private school facilities.

(8) Graduation Activities and Diplomas. Each student with a disability must be given the opportunity, consistent with the decision of the IEP Team, to participate in the education agency's graduation activities and diploma procedures including the opportunity to earn Carnegie Units. For students who are eligible to graduate, the following rules must be used:

(a) Each student with a disability who earns the appropriate number of Carnegie Units, based on the approved state courses of study, and passes all portions of the Alabama High School Graduation Exam or the High School Basic Skills Exit Exam must be awarded the standard or advanced diploma.

290-8-9-.10(8)(b)

290-8-9-.10(9)

(b) Each special education student who accumulates the required number of Carnegie Units for graduation, but does not pass the Alabama High School Graduation Exam or the High School Basic Skills Exit Exam (Exit Exam) must be awarded a graduation certificate and afforded the opportunity to participate in education agency activities related to graduation.

(c) Each special education student who passes the Alabama High School Graduation Exam or the High School Basic Skills Exit Exam (Exit Exam), but does not accumulate the required number of Carnegie Units for graduation must be awarded a graduation certificate and afforded the opportunity to participate in education agency activities related to graduation.

(d) Each special education student who successfully completes his/her individualized education program must be awarded a graduation certificate and afforded the opportunity to participate in education agency activities related to graduation.

(e) Students who have participated in graduation activities but have not earned an Alabama High School Diploma are entitled to a free appropriate public education until they exit school with a regular diploma or they reach age twenty-one.

(f) It is the intent and desire of the State Board of Education that graduation activities and procedures for awarding the standard or advanced or any other diploma authorized by this Board (exit document) and a graduation certificate (exit document) to each eligible student, including special education students, be integrated and identical with no distinctions/differentiations made in regard to the way the exit document is awarded or presented.

(9) Requirements for the Alabama Occupational Diploma. Effective for students with disabilities, as defined by the Individuals with Disabilities Education Act, students must earn the course credits outlined in Ala. Admin. Code r. 290-3-1-.02(8)(g) and take the Alabama High School Graduation Exam at least once (Spring of the 11th grade) in order to be awarded the Alabama Occupational Diploma.

SUPP. NO. 04-4

SPECIAL EDUCATION SERVICES

Reserved.

290-8-9-.10(10)

290-8-9-.10(10)

(10) Reports. Agencies who are receiving state and/or federal dollars and are providing special education and related services to students with disabilities, must complete reports as required by the State Education Agency.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1401(22), 1412, 1413, 1414; 34 CFR §300.24(15), 180-284, 600.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 7-11-89 amended 290-8-9-.11(22)(a) through (b) Monitoring and Withholding Funds and 290-8-9-.11(23)(b) Extended School Year effective 8-16-89; 8-8-91 adopted 290-8-9-.11-.54ER effective 08-08-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; 9-9-94 amended 290-090-090-.12(23)(b)(c) and (25), effective 10-12-94; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.10-.67ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01; adopted 290-8-9-.10(7)(i)-.73ER effective 6-14-01; adopted ER as regular rule effective 9-13-01; amended 5-9-02; effective 6-13-02; adopted as 290-8-9-.10(8)(9).74ER effective 7-8-03; adopted ER as regular rule effective 10-16-03; adopted 290-8-9-.10-.01ER(9) effective 7-13-04; adopted ER as regular rule on 9-9-04 effective 10-14-04.

290-8-9-.11 Definitions.

(1) **Annual Goals.** Measurable statements that describe what a child with a disability can reasonably be expected to accomplish within one school year. Annual goals should be written to address child involvement and progress in the general curriculum and/or to meet other education needs that result from the child's disability.

290-8-9-.11(2)

290-8-9-.11(7)

(2) **At No Cost To Parents.** Specially designed instruction provided without charge to parents. This does not preclude incidental fees that are normally charged to nondisabled children or their parents as a part of the regular education program.

(3) **Audiology.** This includes identification of children with hearing loss; determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of pupils, parents, and teachers regarding hearing loss, and determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(4) **Authority of Hearing Officer.** A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(5) **Benchmarks.** Statements of expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals.

(6) **Consent.** The parent has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language, or other mode of communication, understands and agrees in writing to the carrying out of the activity for which his/her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom, and understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(7) **Controlled Substance.** A drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)].

290-8-9-.11(8)

290-8-9-.11(14)

(8) **Counseling Services.** Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(9) **Critical Skills.** Those skills contained in the child's IEP that are identified by the IEP Team as being necessary to move the child toward his/her level of self-sufficiency.

(10) **Day.** This means calendar unless otherwise indicated as school day or a business day. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the definition of business day, as in the rules for reimbursement for private schools at Ala. Admin. Code r. 290-8-9-.10(7)(d)1. School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

(11) **Destruction.** Physical destruction or removal of personal identifiers so that the information is no longer personally identifiable.

(12) **Dual Enrollment.** A child with disabilities enrolled in a private education program must also be enrolled in a public education program so that special education services can be made available.

(13) **Early Identification and Assessment of Disabilities in Children.** The implementation of a formal plan for identifying a disability as early as possible in a child's life.

(14) **Education Records.** Special education records that are directly related to a child and are maintained by an education agency or institution or by a party acting for the agency or institution. The term does not include records of instructional, supervisory, and administrative personnel as follows: records in the sole possession of the maker; records not accessible or revealed to any other individual except a substitute; records of a law enforcement unit of an education agency or institution maintained and used for law enforcement purposes; records relating to an individual who is employed by an education agency or institution (does not apply to records of an employed individual that are related to his/her status as a student); records created, maintained or used by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional capacity, or assisting in that capacity that are used in connection with treatment to the child; and records of an education agency or institution that contain only information relating to a person after that person is no longer a child.

290-8-9-.11(15)

290-8-9-.11(23)

(15) **Evaluation**. Procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(16) **Extended School Year**. Special education and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

(17) **Free Appropriate Public Education (FAPE)**. Special education and related services necessary for the child to benefit from his/her educational program provided in conformity with the IEP. These services must be provided for children with disabilities in the age range from three to twenty-one at no cost to the parents.

(18) **General Curriculum**. The curriculum adopted by an LEA, schools within the LEA, or where applicable, the SEA for nondisabled children from preschool through secondary school.

(19) **Illegal Drug**. A controlled substance, but not a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

(20) **Individualized Education Program**. A written plan for the provision of special education and related services for a child with disabilities.

(21) **Include**. The items named may not be all of the possible items that are covered, whether like or unlike the ones named.

(22) **Medical Services**. Services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(23) **Native Language**. If used with reference to an individual of limited English proficiency, the term means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child communication except that in all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child in the home or learning environment. For individuals with deafness or blindness, or for individuals with no written language, the

290-8-9-.11(24)

290-8-9-.11(28)

mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

(24) Occupational Therapy. Services provided by a qualified therapist that includes improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

(25) Orientation and Mobility Services. Services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community, including teaching children spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel, to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; to understand and use remaining vision and distance low vision aids, as appropriate; and other concepts, techniques, and tools, as determined appropriate.

(26) Other State Agency. An agency, other than the state education agency or a local education agency, that is under the supervision of the state and provides to children with disabilities, either directly or indirectly, special education and related services.

(27) Parent. A natural or adoptive parent, a guardian, a person acting as a parent of the child, or a surrogate parent. The term does not include the state if the child is a ward of the state. The term parent is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare. State law may provide that a foster parent qualifies as a parent if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; the foster parent has an ongoing, long-term parental relationship with the child; the foster parent is willing to participate in making educational decisions in the child's behalf; and the foster parent has no interest that would conflict with the interest of the child.

(28) Parent Counseling and Training. The assistance provided to parents to help them understand the special needs of their child, providing parents with information about child development, and helping parent to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

290-8-9-.11(29)

290-8-9-.11(36)

(29) **Participating Agency.** Any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under the Individuals with Disabilities Education Act.

(30) **Personally Identifiable.** The term includes the name of the child, the child's parent, or other family member, the address of the child, a personal identifier, such as the child's social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(31) **Physical Education.** The development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

(32) **Physical Therapy.** Services provided by a qualified physical therapist.

(33) **Present Level of Performance.** A statement of how the child's disability affects his/her involvement and progress in the general curriculum; or for preschool children, as appropriate, how the child's disability affects the child's participation in age-appropriate activities.

(34) **Private Agency.** School, other agency, organization or institution that is not under federal or state supervision or control.

(35) **Psychological Services.** These services include administering psychological and educational tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

(36) **Public Agency.** Includes the state education agency, education agencies, and any other political subdivisions of the state that are responsible for providing education to children with disabilities including public charter schools.

290-8-9-.11(37)

290-8-9-.11(42)

(37) **Qualified Personnel.** Persons who have met state education agency approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing special education or related services.

(38) **Recreation.** This includes assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.

(39) **Rehabilitation Counseling.** Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability. The term also includes vocational rehabilitation services provided to a child with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(40) **School Health Services.** Services provided by a qualified school nurse or other qualified person.

(41) **Social Work Services in Schools.** This includes preparing a social or developmental history on a child with a disability; group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation that affect the child's adjustment in school; mobilizing school and community resources to enable the child to learn as effectively as possible in his/her educational program; and assisting in developing positive behavioral intervention strategies.

(42) **Special Education.** Specially designed instruction, at no cost to the parent, to meet the unique educational needs of a child with disabilities. The specially designed instruction is at no cost to the parent but does not preclude incidental fees that are normally charged to nondisabled children or their parents as part of the regular education program. Special education includes classroom instruction, instruction in physical education, home instruction, instruction in hospitals and institutions, and instruction in other settings. The term includes speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards, travel training, and vocational education. The definition of special education is a particularly important one since a child is not disabled unless he/she needs special education. Related services also depend on this definition, since a related service

290-8-9-.11(43)

290-8-9-.11(47)

must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services.

(43) **Specially Designed Instruction.** Adapting, as appropriate, to the needs of a child with a disability, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the his/her disability; and to ensure access of the child to the general curriculum, so that he/she can meet the educational standards within the jurisdiction of the education agency that apply to all children.

(44) **Speech-Language Pathology Services.** Services including the identification of children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(45) **Supplementary Aids and Services.** Aids, services, and other supports that are provided in regular classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with their least restrictive environment.

(46) **Substantial Evidence.** Beyond a preponderance of the evidence.

(47) **Transition Services.** A coordinated set of activities for a child, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based upon the individual child's needs, taking into account the child's preferences and interests, and must include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for children with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a child with a disability to benefit from special education.

290-8-9-.11(48)

290-8-9-.12(1)

(48) **Travel Training.** The provision of instruction, as appropriate, to children with significant disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and sagely from place to place within that environment (i.e. in school, in the home, at work, and in the community).

(49) **Vocational Education.** Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(50) **Weapon.** Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code. [Authority: 20 U.S.C. 1415(k)(1), (10)] Sec. 300.521 Authority of hearing officer.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; Individuals with Disabilities Education Act Amendments of 1997.

History: Amended 8-12-80, repealed 4-10-86, new 4-10-86 effective 5-30-86; 8-8-91 adopted 290-8-9-.13-.56ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; 9-9-94 amended 290-8-9-.14(7)(a), effective 10-12-94; repealed 7-13-99, new 7-13-99 adopted 290-8-9-.11-.68ER effective 7-13-99; adopted ER as regular rule effective 10-14-99.

290-8-9-.12 Exception to Ala. Admin. Code r. 290-8-9-.03(10). All children referred prior to July 1, 1998, and who have been identified as specific learning disabled using the simple standard score discrepancy criteria will continue to be reevaluated with the same criteria until such time as the child is no longer eligible for services. However, if a qualified team, including the parent, deems it appropriate to use the regression to the mean criteria, they may do so, but written justification for this action must be documented in the eligibility report. The simple standard score discrepancy criteria are as follows:

(1) **Definition.** Specific Learning Disabilities means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. Children with specific learning disabilities will demonstrate a severe discrepancy between intellectual ability and achievement in one or more of the following areas: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, or written expression.

290-8-9-.12(2)

290-8-9-.12(2)(d)

(2) **Eligibility Criteria.** The eligibility team must consider a variety of criteria in the identification of children with specific learning disabilities. No single criterion or specific number of characteristics can be used in identifying children with specific learning disabilities. Rather, the age-appropriateness of observed behaviors and the frequency, intensity, and duration of a child's learning problems are critical in distinguishing specific learning disabilities from learning problems resulting from such factors as low motivation, underachievement, or inadequate instruction. The eligibility team must consider each of the following criteria in identifying children with specific learning disabilities. These criteria must be documented in the written report of the eligibility team.

(a) **Appropriate Learning Opportunities.** The eligibility team must determine that children have been provided appropriate learning opportunities commensurate with age and ability level. Prior to referral, efforts should be made in the regular school program to adapt or modify curriculum, materials, and/or instruction to accommodate the child for at least six weeks. These interventions might include, but are not limited to, changes in teaching methods, behavior management strategies, scheduling, grouping, seating arrangements, or consultation with providers of school psychological services. Documentation of prereferral intervention strategies must be provided for the eligibility team. This should identify the interventions that were implemented and document that the child still failed to achieve. Documentation must be included in the written report of the eligibility team.

(b) **Intellectual Functioning.** A total or full-scale score must be used. When school personnel suspect that the intellectual ability is not accurately reflected by an obtained total or full-scale IQ score, other measures or procedures that assess cognitive abilities may be used. This documentation must be included in the written report of the eligibility team.

(c) **Deficit in Achievement.** When provided with appropriate learning opportunities, children with specific learning disabilities do not achieve commensurate with age and ability level. Their achievement in one or more of the following areas is below expectancy: basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, oral expression, listening comprehension, and/or written expression. Assessment of actual achievement must be based on the teacher referral, classroom observation, work samples, individually administered diagnostic tests, and other related information. This documentation must be included in the written report of the eligibility team.

(d) **Severe Discrepancy Between Intellectual Ability and Achievement.** Children with specific learning disabilities usually exhibit a severe discrepancy between intellectual ability and achievement/diagnostic test standard scores. The standard score on the individual achievement/diagnostic test(s) must be at least one standard deviation unit

290-8-9-.12(2)(e)

290-8-9-.13(1)

below the child's intelligence quotient through ten years of age and must be at least one and a half standard deviation units below the child's intelligence quotient if the child is eleven years of age or older. This documentation must be included in the written report of the eligibility team.

(e) Exclusion of Other Primary Conditions. The area of specific learning disabilities does not include children whose learning problems are primarily the result of visual, hearing or motor disabilities; mental disabilities; emotional conflict; or environmental, cultural or economic disadvantage. This documentation must be included in the written report of the eligibility team.

(3) Evaluations Required.

- (a) Vision and hearing screening.
- (b) Behavior rating scale.
- (c) Individual educational achievement and/or diagnostic test(s).
- (d) Individual intellectual evaluation.
- (e) Environmental, cultural, and economic concerns checklist.
- (f) At least one team member other than the child's regular teacher must observe the child's academic performance in the regular classroom setting. In the case of a child of less than school age or out-of-school, a team member must observe the child in an environment appropriate for a child of that age.
- (g) Work samples.
- (h) Professional judgment should be used to determine if the results of any of the above evaluations are reliable sources of information, or if other assessment data (e.g. developmental scales, systematic observation) may prove to be a more accurate indicator of the child's level of functioning.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 5(b); 34 CFR §300.540-542.

History: Amended 8-12-80; repealed 4-10-86, new 4-10-86 effective 5-30-86; 8-8-91 adopted 290-8-9-.17-.60ER-.effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 5-13-98, new 5-13-98, effective 7-1-98.

290-8-9-.13 Case Manager for Students with Disabilities.

(1) Case Manager. Each special education teacher will be assigned as a case manager for a maximum number of student records to ensure the implementation of special education and related services for these students. The number of records to manage does not represent the number of students that a teacher will serve. Those numbers will be determined by the education agency by taking into consideration a number

290-8-9-.13(2)

290-8-9-.14(2)

of factors including severity of the needs of the students, location of the services (e.g. general education classroom, resource room), the number of campuses a teacher serves, and whether all IEPs can be implemented as written. This rule does not apply to teachers providing special education services to students with disabilities in correctional facilities.

(2) **Number of Student Records for Case Managers.** The maximum number of records per teacher is twenty; for speech/language, the maximum number of records is thirty.

(3) **State Monitoring of Case Manager Rule.** To monitor for compliance with the rule in Ala. Admin. Code r. 290-8-9-.13(1)(2), the Department of Education will review the total number of students with disabilities and total number of teachers rather than by individual teacher or school.

(4) **Service Delivery.** Students who are provided special education services in settings other than the student's general education classroom (i.e., resource, self-contained) must be provided services as follows:

(a) Elementary students with disabilities may only be served with other elementary school-aged students.

(b) Secondary students with disabilities may only be served with other secondary school-aged students.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39.

History: New 7-13-99 adopted 290-8-9-.13-.69ER effective 7-13-99; adopted ER as regular rule effective 10-14-99.

290-8-9-.14 Gifted.

(1) **Definition.** Intellectually gifted children and youth are those who perform at high levels in academic or creative fields when compared with others of their age, experience, or environment. These children and youth require services not ordinarily provided by the regular school program. Children and youth possessing these abilities can be found in all populations, across all economic strata, and in all areas of human endeavor.

(2) **Referral.** Each LEA must develop and implement procedures to ensure that students who exhibit gifted characteristics are referred for gifted services. Efforts must be made to identify students among all populations and socio-economic groups as well as students with disabilities and students who are Limited English Proficient (LEP). Parents, teachers, and students must be informed of these procedures.

290-8-9-.14(2)(a)

290-8-9-.14(4)(a)3.(vii)

(a) All second grade students will be observed as potential gifted referrals using a gifted behavior checklist provided by the State Department of Education.

(b) Standard Referral. A student may be referred for consideration for gifted services by teachers, counselors, administrators, parents or guardians, peers, self, and other individuals with knowledge of the student's abilities. Standard referrals may occur at any time for students in grades K - 12. Parents must be informed when students are referred.

(c) Gifted Referrals Screening Team (GRST). Each local education agency must establish a team(s) to review referrals to determine if further assessment is indicated. Each team should consist of at least three individuals including someone knowledgeable about the student and someone knowledgeable about gifted education.

(3) Consent.

(a) Parental Consent for Evaluation. The local education agency must obtain written parental consent prior to evaluating a student.

(b) Parental Consent for Placement. An identified gifted student may be placed in a program for the gifted upon written approval of the parents. Participation in this program is not mandatory should the parent and/or the student choose not to participate.

(c) Rights in Gifted Education. A copy of the rights pertaining to gifted education services must be given to the parents with the consent for evaluation.

(4) Evaluation. Each local education agency must develop and implement procedures to evaluate students referred for gifted services.

(a) Information must be obtained in the following areas:

1. Vision and Hearing. Screening must be completed prior to completing other individually administered assessments.

2. Aptitude. Aptitude should be assessed through an individual or group test of intelligence or creativity.

3. Performance. At least three examples of performance must be included from the following list:

(i) Achievement test scores,

(ii) Portfolio,

(iii) Product,

(iv) Grades,

(v) Work samples,

(vi) Leadership/motivation subscale scores from a behavior rating scale, or

(vii) Other documentation as deemed appropriate by the GRST.

290-8-9-.14(4)4.

290-8-9-.14(6)(b)

4. Characteristics. A behavior rating scale designed to assess gifted behaviors should be used.

5. Aptitude Test Selection. Information must be gathered to determine if there are any environmental, cultural, economic, language differences, or a disabling condition that might mask a student's true abilities and thereby affect student performance in the areas evaluated.

(b) Tests and evaluative materials selected and administered should be sensitive to cultural, economic, and linguistic differences.

(c) For special populations such as the sensory impaired, LEP, or physically impaired, assessments used must be appropriate for their special needs.

(5) Eligibility Determination. Each local education agency must establish an Eligibility Determination Team(s) (EDT) to implement procedures to determine eligibility of students for gifted services. Each team should consist of at least three individuals including someone knowledgeable about the student being assessed, someone knowledgeable about gifted students in general, and someone able to interpret the assessment information gathered.

(a) Timeline. Eligibility must be determined within ninety days of the referral.

(b) Notice. The local education agencies must provide written notice to parents regarding the eligibility decision.

(c) Automatic Eligibility. A student may be determined automatically eligible for gifted services when:

1. The obtained full scale/composite IQ score on an individually administered test of intelligence (NOT a screener) is two standard deviations above the mean or higher; or

2. Either the Verbal Average Standard score of Figural Creativity Index of the *Torrance Tests of Creative Thinking* is at or above the 97th national percentile.

(d) Matrix of Multiple Criteria. When students do not meet the automatic criteria described above, a matrix of multiple criteria must be utilized to determine eligibility. The matrix, developed by the State Department of Education, requires information in the areas described above in Ala. Admin. Code. r. 290-8-9-.13(4)(a)1.-5.

(6) Gifted Education Plan (GEP). Each gifted student must have a written plan that describes the services to be provided.

(a) GEPs may be developed on an individual basis, group basis, or both.

(b) GEP Meeting Notice. School officials must provide prior notice to parents regarding the date, time, and location of the GEP meeting.

290-8-9-.14(6)(c)

290-8-9-.14(8)(b)

(c) **Timeline.** The GEP must be developed within thirty calendar days after the student has been determined eligible for gifted education services.

(d) **GEP Meeting Participants.** The participants must include the gifted education teacher, the parents, the student (when appropriate), and other persons at the discretion of the parents or local education agency (i.e. the general education teacher or LEA representative). When parents cannot attend the GEP meeting, the meeting can be conducted with the teacher (or other staff member responsible for the student's program) and the student (when appropriate).

(e) **GEP Content.** A GEP for gifted students must contain the following information:

1. Name of Student,
2. Implementation To and From Dates,
3. Individualized Goals or Program Description,
4. Placement,
5. Transportation, if appropriate, and
6. Dated signatures of each GEP Committee member.

(f) **GEP Review.** The GEP Committee must meet at least once each year to review and, if appropriate, revise the GEP. If the parents or the student's teacher have reason to believe that the GEP needs revision prior to the annual meeting, either party may request a GEP meeting to consider revision. When a GEP Committee meeting has been requested, the LEA must conduct the meeting within thirty calendar days.

(g) A copy of the GEP must be provided to parents upon request.

(7) **Placement.** The GEP Committee will determine the appropriate placement for the provision of gifted services to a student. Local education agencies must utilize a variety of service options that may include but are not limited to resource room pull-out, regular class services (i.e. compacting, cluster grouping, subject acceleration) grade acceleration, mentorships, ability groupings, advanced classes, academic competition, and independent study.

(8) **Administration.**

(a) **Age Range for Services.** A local education agency must serve gifted students in the same age range as it serves regular education students. An identified gifted student is no longer eligible for services when the student earns an Alabama High School Diploma.

(b) **Transportation.** Gifted students must not be excluded from services because of inadequate transportation services.

290-8-9-.14(8)(c)

290-8-9-.14(10)

(c) **Student Enrollment.** Students must be enrolled in the public school in order to be referred, evaluated, and/or to receive gifted services. Local education agencies have no obligation to evaluate and/or provide services for gifted students enrolled in private schools.

(d) **Child Count.** Gifted students must be included in the local education agencies' Child Count when all of the following criteria are met:

1. Student is identified by state standards,
2. Student has a current GEP, and
3. Student's attendance in gifted services on December 1 is documented.

(e) **Local Education Agency Plan for Gifted Services.** Local education agencies must develop, and implement, according to state guidelines, a written plan for serving gifted students.

(f) **Transfer Students.** When gifted students transfer from one school to another within the state of Alabama or from out-of-state, the receiving local education agency may accept the assessments and/or eligibility decision of the student from the previous school system or conduct its own assessments and/or eligibility.

(g) **Responsible Staff Person.** Each local education agency must designate a person to have the responsibility for the development, supervision, and implementation of gifted services.

(9) Caseload. The following numbers are to be considered when determining appropriate caseloads for teachers of the gifted:

- (a) Elementary - forty-five total, no more than fifteen at one time.
- (b) Middle School - fifty total, no more than fifteen at one time.
- (c) High School - sixty total, no more than twenty at one time.

For teachers who serve students at more than one level, use the middle school numbers.

(10) Procedural Safeguards. Each LEA must establish a grievance procedure, consistent with local policy, through which parents and students may resolve concerns regarding identification, evaluation, eligibility, or services for gifted students. When attempts to resolve the issue at the local level fail, parents may utilize the Complaint Procedures, Mediation, or Impartial Due Process Hearing Procedures developed by the State Department of Education as an appropriate administrative remedy for matters pertaining to violations of state law or regulation regarding the identification, evaluation, eligibility, or services for gifted students. To obtain a copy of these procedures, call Special Education Services at (334) 242-8114, or write to Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101.

290-8-9-.15

290-8-9-.15(2)(e)

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39.

History: Amended 8-12-80, repealed 4-10-86, new 4-10-86 effective 5-30-86; 8-8-91 adopted 290-8-9-.14-.57ER effective 8-8-91; 10-10-91 adopted ER as regular rule effective 11-19-91; repealed 6-10-93, new 6-10-93 effective 8-1-93; repealed 7-13-99 adopted 290-8-9-.14-.70ER effective 1-1-2000; adopted ER as regular rule effective 1-1-2000.

290-8-9-.15 Exception to Ala. Admin. Code r. 290-8-9-.03(6). Minority students in the seventh grade and older who were identified as mentally retarded prior to July 1, 1999, will continue to be reevaluated under the criteria in this rule. Non-minority students in the fourth grade and older who were identified as mentally retarded prior to July 1, 1999, will continue to be reevaluated under the criteria in this rule. However, if a qualified team, including the parent, deems it appropriate to use the criteria in Ala. Admin. 290-8-9-.03(6), they may do so, but written justification for this action must be documented in the eligibility report.

(1) **Definition.** Mentally Retarded means significantly subaverage general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period that adversely affects the student's educational performance. Students classified as mentally retarded must have a total or full-scale intelligence quotient of seventy (70) or below and deficits in overall adaptive behavior.

(2) **Evaluations Required.**

- (a) Vision and hearing screening.
- (b) Adaptive behavior scale.
- (c) Individual educational achievement and/or diagnostic test(s).
- (d) Individual intellectual evaluation.
- (e) Professional judgment should be used to determine if the results of any of the above evaluations are reliable sources of information, or if other assessment data (e.g. developmental scales, systematic observation) may prove to be a more accurate indicator of the student's level of functioning.

Author: Ed Richardson

Statutory Authority: Ala. Code Title 16, Chapter 39; 20 U.S.C. 1401(3)(A)(B)

History: New 7-13-99 adopted 290-8-9-.15-.71ER effective 7-13-99; adopted ER as regular rule effective 10-14-99; adopted as ER effective 10-12-00; adopted ER as regular rule effective 1-18-01.

SUPP. NO. 99-4

SPECIAL EDUCATION SERVICES

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