



Special Education Policies and Procedures

Barnwell School District 45

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Introduction

The purpose of this document is to provide policies and procedures regarding services for students with disabilities as defined by the Individuals with Disabilities Education Act (IDEA). Barnwell School District 45 conducts its Special Services Program in accordance with South Carolina State Board of Education Regulation 43-243 as amended. Further, the Special Services Program is guided by the *South Carolina Special Education Process Guide* published by the Office of Special Education Services, SC State Department of Education.

This is a living document and will be updated on a regular basis as Barnwell School District 45 receives further guidance from the United States Department of Education- Office of Special Education Programs, South Carolina Department of Education- Office of Special Education Services, results of court decisions, and changes in state statute.

Barnwell School District 45 does not discriminate on the basis of race, color, national origin, sex, or disability in admission to, treatment in, or employment in its programs and activities. Inquiries regarding the nondiscrimination policies should be made to the Director of Special Services at 803-541-1331.

For questions concerning this document or questions concerning Barnwell School District 45 Special Education Programs, please contact the Director of Special Services at 803-541-1331.

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Parent Rights in Special Education

Parent Participation

Barnwell School District 45 will ensure that parents have the opportunity to participate as members of their child's IEP team. In South Carolina, a parent is defined as a person who legally has the care and management of a child. The IDEA defines a parent as follows:

- A biological or adoptive parent
- A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent
- A guardian generally authorized to act as the child's parent or to make educational decisions for the child (but not the state if the child is a ward of the state)
- A person acting in the place of a biological or adoptive parent (i.e., grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare
- A surrogate parent (see below)

Surrogate Parents

A surrogate parent is an adult, other than a child's parent, appointed to represent the educational interests of a student who may be or who has been determined eligible for special education and related services. The surrogate has the same rights and procedural safeguards as a parent of a student with disabilities. The school district is responsible for appointing a surrogate parent when needed and maintaining a list of people eligible to serve as surrogate parents. The district will appoint a surrogate in writing within 30 days after determining the need for a surrogate.

A. Determination of Need

1. For special education purposes, a surrogate parent is **not** necessary if the person enrolling the student meets one of the following definitions of a "parent" as defined in IDEA:
 - a. A biological or adoptive parent of a child; or
 - b. A foster parent; or
 - c. A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the state if the child is a ward of the state); or
 - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.
2. If the person enrolling the student does not meet any of the definitions listed in #1 above, a surrogate parent must be appointed. A surrogate parent must

also be appointed when a parent requests the appointment in writing. The surrogate parent will then represent the parent in making educational decisions for the student. To determine if a student is in need of a surrogate parent, the school registrar, school psychologist, or designee:

- a. Reviews the student's information to determine if the student's caregiver is the parent, legal guardian, other family member, state agency, or other.
- b. If the school registrar or designee determines that the student is residing in a foster home or otherwise is in custody of a state agency, that person contacts the district school psychologist who obtains verification from the custodial agency relative to the status of the parent's educational rights.
- c. If the school psychologist determines that the student is a ward of the state, the school psychologist obtains a copy of a court order or other written verification of the student's status as ward of the state from the custodial agency and attaches it to the Determination of Need/Assignment for Surrogate Parent.
- d. If the student is transferring as a result of placement in a group home or foster home or is living with a person other than the parent or is presented for enrollment by another agency (e.g., DSS, DJJ, Mentor, Continuum of Care), the Determination of Need/Assignment for Surrogate Parent must be completed. A court order or other legal documentation is required to establish custody and parental rights related to education.
- e. If parents retain all educational rights, then the parent receives all special education notices, meetings and parental consents. In cases where the parent does not have educational rights, a surrogate parent would need to be appointed. Caseworkers or employees of agencies (e.g., DSS, DDSN, Continuum of Care) cannot act and provide consent as a parent even if that agency has the educational rights for the child.
- f. In cases where a parent is unresponsive or lives a great distance from the child's school, Barnwell School District 45 may obtain written authorization from the parent to appoint a surrogate to represent the child. Parental permission for the appointment is voluntary, explicitly authorized in writing using the Authorization for Appointment of a Surrogate and can be revoked at any time. The surrogate, once appointed, represents the child until the parent revokes authorization for the child to be represented by the surrogate.
- g. If any individual requests that a surrogate be appointed for a student, the district maintains written documentation of the request in the student's record and will follow procedures outlined in #2 of this section to determine if the student is eligible for a surrogate parent.
- h. When a surrogate parent has been appointed, the Director of Special Services signs the Determination of Need/Assignment for Surrogate Parent, attaches all written documentation to it and maintains this information in the student's record.

B. Efforts to obtain parental involvement

1. If the parents' educational rights have not been revoked, At least ten (10) calendar days prior to assignment of a surrogate, the school psychologist or designee makes a minimum of two (2) documented attempts to locate the parent. If a response is obtained from the parent prior to the ten (10) day period, then the timeline is waived. These attempts may include but are not limited to a combination of the following:
 - a. Correspondence via regular mail;
 - b. Correspondence via certified mail;
 - c. Correspondence via electronic mail;
 - d. Phone calls to last known phone number;
 - e. Phone calls to neighbors and relatives;
 - f. Phone calls to other agencies;
 - g. Home visits to last known address;
 - h. Home visits to neighbors and relatives, and
 - i. Contacts with other agencies.
2. The school psychologist documents all attempts to locate the parent and provides a copy for the student's record. Documentation may include phone logs, narrative reports, and copies of correspondence including returned envelopes and certified mail receipts.
3. If the school psychologist locates the parent but determines that he or she is unwilling or unable to participate in the educational decisions relative to his or her child, the Social Worker advises the parents of their right to have a surrogate appointed to act on the behalf of the student.
4. If the parent requests to have a surrogate assigned, the school psychologist either obtains the parent's signature on the Authorization for Appointment of a Surrogate or attaches a copy of the parent's written request for assignment of a surrogate parent to the Determination of Need/Assignment for Surrogate Parent. The school psychologist informs the parents that parent permission for the appointment of a surrogate must be voluntary, explicitly authorized in writing, and revocable at any time. The surrogate, once appointed, may then represent the child until such time as the parent revokes authorization for the child to be represented by the surrogate parent.
5. If the school psychologist determines the location of the student's parent but the parent refuses to participate in the educational decision making process and refuses or does not respond to efforts to have a surrogate assigned to represent the student, he/she contacts the Director of Special Services who may initiate a due process hearing to gain consent for evaluation or placement. The Director assigns a surrogate for the student following the decision of a hearing officer for the placement to take effect.

C. Qualifications

1. To determine if the potential surrogate parent meets Federal and State eligibility requirements, the school psychologist or designee requests that the individual complete the Surrogate Parent Verification of Eligibility. Caseworkers or employees of agencies (e.g., DSS, Mentor, Continuum of Care) cannot act and provide consent as a parent even if that agency has the educational rights for the child. In most circumstances, a Foster Parent meets the definition of a parent and does not have to be appointed as a Surrogate Parent.
2. The Director of Special Services or designee reviews the completed Surrogate Parent Verification of Eligibility to ensure that the potential surrogate meets all eligibility requirements and understands the student's cultural and linguistic background.

D. Assignment

1. When a surrogate has been assigned, either from the registry listing or an eligible relative or other person who knows the child, he or she sends the Determination of Need/Assignment for Surrogate Parent to the surrogate and a copy of the letter of assignment is maintained in the student's record.
2. The Director of Special Services or designee meets with the surrogate, the teacher, and other school personnel who are knowledgeable about the student's educational needs. The role and responsibilities of the surrogate parent in the educational decision-making process are reviewed, and the surrogate is provided a copy of the Procedural Safeguards Notice. The parents' due process rights are reviewed as outlined in the handbook. The special education teacher or other appropriate school personnel provide information relative to the student's disability or suspected disability and review any resulting educational implications.

E. Removal

1. If it is necessary for a surrogate to resign for personal reasons (e.g., moved, illness, other commitments), the Director of Special Services or his/her designee maintains written documentation in the student's record of the date and reason for the resignation.
2. If the Director of Special Services, his/her designee, or the school psychologist determines that the surrogate is no longer eligible, it would be due to:
 - a. Conflict of interest,
 - b. The parent becomes available to represent the student,
 - c. Student is no longer eligible for special education, or
 - d. Student reaches age of majority and is capable of representing himself or herself.
3. If the Director of Special Services or his/her designee or school psychologist

determines that the surrogate is not fulfilling his or her responsibilities (e.g., repeatedly missing scheduled meetings, failing to respond to correspondence relative to the scheduled meetings or conferences), the Director of Special Services or his/her designee advises the surrogate in writing of his or her removal and the reason and maintains a copy of this correspondence in the student's record.

4. The Director of Special Services or his/her designee determines if the student continues to need a surrogate parent. If the student remains in need of surrogate representation, the Director of Special Services or his/her designee determines if an eligible caregiver or relative is available and willing to serve as surrogate. If none is eligible or available, he or she selects a volunteer from the registry.
5. The Director of Special Services or his/her designee maintains written documentation (e.g., phone log, narrative report, copies of correspondence) relative to any disagreement of the choice of a surrogate parent. In the event that a due process hearing is conducted as a result of disagreement about the choice of a particular surrogate parent, this documentation may be needed as evidence.

F. Procurement

To recruit surrogate parent volunteers, the Director of Special Services may contact, by telephone or letter, churches, civic organizations, and other organizations/individuals interested in assisting disabled students.

Parent Rights Notice

The district is required to provide a copy of the Procedural Safeguards Notice (Parent Handbook to Special Education) as follows:

- At least once per school year
- Upon referral or parent request for evaluation
- Upon the first formal complaint or due process complaint filed in a school year
- Upon a disciplinary removal from school that constitutes a change in placement
- Upon parental request

Prior Written Notice

A Prior Written Notice (PWN) must be provided to parents after all IEP meetings and a reasonable amount of time before the date the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education to their child. The PWN must contain the following specific information:

- Description of the action proposed or refused
- Explanation of why the district proposes or refuses to take the action
- Description of each evaluation procedure, assessment, record, or report the district used as the basis for the action
- Description of other options the IEP team considered and reasons why they were rejected
- Description of any other factors relevant to the proposal or refusal

- A statement that the parents have parental rights under the law
- Sources for parents to contact to assist in understanding their rights

The Following Requests for Parent Consent Do Not Require PWN:

1. **Consent to excuse an IEP team member from the IEP team meeting:** A required member of the IEP team, may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if, (a) the parent, in writing, and the district, consent to the excusal; and (b) the IEP team member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting
2. **Consent to invite outside agency:** When the IEP team is considering a child’s postsecondary goals and transition services needed to assist the child in reaching those goals, the district is required to invite a representative of any agency that is likely to provide or pay for transition services. The district must obtain parental consent at least annually to invite the representative from that agency because confidential information about the child would be shared at the meeting.
3. **Consent for use of private insurance and Medicaid:** When an IEP team has identified special education and related services for a child who is Medicaid eligible or is covered by private insurance, the district must request parent consent at the time the services are determined necessary and provide notice on an annual basis in order to access Medicaid or private insurance.

Parent Consent

Parent consent must always be “informed consent”. The PWN must accompany the request for consent for each proposed special education action. The parent must give their consent in writing. Parental consent (or the consent of the adult student) is required for the following actions:

- to conduct an initial evaluation.
- to conduct a reevaluation. However, if, after reasonable attempts to obtain informed consent, the parent does not respond, the District may conduct the reevaluation without parental consent.
 - Reasonable attempts include at least two contacts by two different methods.
 - Methods include telephone calls, written correspondence, visits to home or place of employment, or e-mails.
- for the initial provision of services on the IEP.
- to excuse a required IEP team member from the IEP meeting.
- to invite an outside agency to their child’s IEP to discuss his/her postsecondary goals and transition services.
- to consent to the use of private insurance and Medicaid. The district must obtain a one-time written consent from the parent, along with providing written notification of the intent to bill, before accessing the child or parent’s public benefits or insurance for the first time. The consent must specify the following:
 - personally identifiable information that may be disclosed
 - purpose of the disclosure
 - agency to which the disclosure may be made

- that the parent understands and agrees that the public agency may access the benefits or insurance to pay for services
- The district must continue to provide written notification annually to the parents before accessing the public benefits or insurance.
- The written notification must explain the parents' rights to ensure that they are fully informed before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must be written in language understandable to the general public and 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.
- To consent to allow an individualized family services plan (IFSP) to be used as an IEP. However, Barnwell School District 45 develops an IEP for children transitioning from Part C to Part B at the age of three.

The district must make reasonable attempts to obtain consent from the parents for each special education action as required. Reasonable attempts, including at least two different methods (e.g., by phone, in person, and/or in writing) will be made and results documented. Parents are not required to give consent for changes in special education. If the parent declines to give permission for changes, the student's file will be considered inactive. The student will not be eligible to receive the discipline protections under IDEA or to receive accommodations, modifications, or any services specified on the IEP. However, the student can be referred to the school's Section 504 Committee for consideration.

Parent consent is not needed for the following actions:

- Review of existing data as part of an initial evaluation or a re-evaluation.
- Administering a test or other evaluation that is administered to all children unless consent is required of parents of all children.
- Change in placement (i.e., increase or decrease in amount of special education services) once the parent has given consent for initial provision of special education services.

Revocation of Parental Consent for Placement

1. A parent or student who has reached the age of majority may revoke consent for the continued provision of special education and related services. This revocation must be provided to the district in writing so that both the parent and the district have documentation that the child will no longer receive special education and related services. When parents revoke their consent for special education services, the revocation is not retroactive but becomes effective on the date that it was revoked. Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the consent was revoked.
2. Once the district receives a parental revocation of consent, in writing, for all special education and related services for a child and provides Prior Written Notice (PWN) to the parent, the district must, within a reasonable time, discontinue all special education and related services to the child. In situations where a parent disagrees with the provision of a particular special education or related service and the parent and district agree that the child would be provided with a FAPE if the child did not receive that service, the district should remove the service from the child's IEP. If, however, the parent and district disagree about whether the child would be

provided with a FAPE if the child did not receive a particular special education or related service, the parent may use due process procedures to obtain a ruling that the service with which the parent disagrees is not appropriate for his/her child. The parent may not revoke consent for a particular service.

3. When a parent or adult student requests revocation, the IEP team (including the Director of Special Services or designee) should attempt to meet with the parent to discuss the concerns and reasons for revoking consent. However, the parent or adult student cannot be required to provide a reason for the request to revoke consent or to attend an IEP meeting. The district must promptly provide the parent or student who is 18 or older with PWN regarding the change in educational placement and services that will result from the revocation.
4. The PWN must be provided a reasonable time before the district discontinues services and must give the parent information and time to fully consider the change and its implications. This PWN will ensure that parents are fully informed of the educational services and supports that they are declining. The PWN must inform the parent, as plainly as possible, that the student will no longer receive any special education or related services; nor will the student be entitled to the protections under the IDEA disciplinary procedures if he or she violates the district's disciplinary code of conduct. The PWN must be clear and specific so that the parent or student can make an informed decision. The district may not discontinue services until the PWN has been provided to the parent. If the student who has reached age 18 revokes consent for services, the district must provide any notice (including PWN) to the student and parents. The district may not use the dispute resolution mechanisms in the IDEA (mediation and due process) when a parent revokes consent. The district cannot override a parent's revocation of consent for the continued provision of services.
5. Revocation of consent releases the district from responsibility and liability for providing a FAPE from the time the parent revokes consent in writing until the time, if any, that the child is again evaluated and deemed eligible for special education and related services. The district will not be deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to discipline protections under the IDEA. Once a parent has revoked consent and PWN has been provided, the child is considered to be a general education student. Teachers are no longer required to provide previously identified IEP accommodations in the general education environment. The revocation is for all special education services.
6. Once a parent revokes consent for a child to receive special education and related services, the child is considered a general education student. Therefore, if a parent or adult student revokes consent after the school year begins, but before administration of the annual state assessment, the district is no longer required under the IDEA to provide accommodations that were previously included in the student's IEP.
7. The parent's revocation of consent is not retroactive; therefore, the district would not be required to amend the student's educational records to remove any references to the student's receipt of special education and related services. The parent still retains the right, however, to request amendments to information that is inaccurate or

misleading or violates the privacy or other rights of the student.

8. Students who have previously received special education services and subsequently had consent revoked are treated no differently in the Child Find process than any other child. Ensuring that general education teachers make appropriate referrals for children suspected of having a disability, which would include the referral of children whose parents have previously revoked consent, is consistent with the Child Find responsibility.
9. After withdrawing a student from special education services, the parent maintains the right to subsequently request an initial evaluation to determine if the student has a disability and needs special education. There is no limit as to how frequently a parent may revoke consent and then subsequently request an initial evaluation. If a student who had previously received special education services and had consent revoked was again referred for an evaluation, the district must treat this referral as an initial evaluation rather than as a reevaluation. Depending on the data available, a new evaluation may not always be required. On the basis of the review of existing evaluation data and input from the student's parent, the IEP team, and other qualified professionals, the group would identify what, if any, additional data is needed. The parent retains the right to refuse to provide consent for an initial evaluation.
10. Although special education and related services must be discontinued promptly upon receipt of the written revocation of parent consent and the sending of PWN, the district may consider the appropriateness of a 504 evaluation under Section 504 of the Rehabilitation Act of 1973 for the student.

Notice of IEP Meeting

Barnwell School District 45 will work diligently to ensure that parents are afforded the opportunity to participate in their child's IEP meetings. Parents must be provided with reasonable notice of an IEP meeting for their child except in extenuating circumstances that necessitate an emergency meeting (e.g., manifestation determination meeting).

At least two attempts to notify the parent must be made using two different methods. One attempt may be a phone call and at least one attempt must be in writing. Written documentation of all attempts to contact the parent must be maintained. Every attempt should be made to accommodate a parental request to reschedule the meeting.

Parents must be notified of the specific purpose of the meeting. The exact date, time, and location of the meeting must be specified on the meeting notification. Positions of persons who have been invited to attend will be included as well as information regarding the parents' right to invite to the meeting individuals they believe have knowledge or special expertise about their child, and in the case of a preschool child, their right to invite the local Part C representative if their child was previously served in Part C.

Transfer of Rights

On or before a student's 17th birthday, the special education teacher provides the student and parent with the Transfer of Rights- Notice of Disabled Student's Rights at Age 18 form and obtains the student's and parent's signatures. When a student reaches the age of (18), the special education teacher provides the student with the Transfer of Rights form and obtains his/her signature. At this point, the district will provide all required special

education notices to both the student and parent and obtain consent for specific special education actions from the student. If a parent wishes to retain legal guardianship of their child with a disability once he/she turns 18, they must do so through the court system.

Child Find Procedures

In accordance with the Individuals with Disabilities Education Improvement Act (IDEA), Barnwell School District 45 is obligated to locate and identify any child, age 3-21, that is suspected of having a disability and is in need of special education services. The District will locate these children through referrals from BabyNet, the District Child Find procedures or general education intervention for children from Pre-Kindergarten to age 21 enrolled in public schools.

Barnwell School District 45's Child Find Information, in the form of a flyer, is provided to the following:

- Local Day Care Centers
- Local Physicians
- Local Churches
- Local Private Schools and Home-School Associations
- Barnwell School District 45 schools
- Head Start
- First Steps

In addition, Barnwell School District 45 places Child Find notices in the community newspaper and runs announcements on the local radio station.

Child Find screening appointments are scheduled at parent request throughout the year. The Child Find Screening team consists of: the parent(s), a Special Education Teacher, a Speech/Language Therapist, a School Psychologist, a Local Education Agency (LEA) Representative, and any other pertinent personnel (e.g., Occupational Therapist, Physical Therapist). Upon receipt of a request for screening, an appointment is scheduled through the Special Services Department and District Child Find Packet is mailed to the parent.

This packet includes:

- an overview of the screening sessions and what to expect during the process;
- the date, time, and location of the child's screening appointment;
- a list of the documents for the parent to bring to the screening;
- the address of the screening location
- a Health and Developmental History Form

At the Child find screening, the Child Find team:

- Screens each child's vision, hearing, and speech-language skills.
- Screens each child's cognitive, adaptive, and social skills, as needed.
- Screens each child's gross and fine motor skills, as needed.
- Completes an observation form.
- Has the parent complete a district Medicaid Notification and Release Form

- Has the parent sign a release of information, as needed to obtain additional information.
- Conducts a review of existing data for each child.
- Develops a written plan using the Referral/Evaluation Planning form in Enrich summarizing the screening results, pre-existing data and recommendations for further actions. The form is explained to the parent, and a copy of the form is given to the parent at the meeting or mailed to the parent within seven days of the screening, along with the Prior Written Notice (PWN).
 - If further evaluation is warranted, the team will obtain Consent for Evaluation.
 - If further evaluation is not warranted, a proposed/recommended plan of action will be documented and a copy of the screening report will be given to the parent along with PWN.

If the team determines a comprehensive initial evaluation is needed, the district then follows all procedures relative to conducting a comprehensive, initial evaluation including adherence to the 60 day time line in determining eligibility. (See Initial Evaluation Processes.)

BabyNet Procedures

The Part C agency in South Carolina, BabyNet, is responsible for transferring information to Barnwell School District 45.

- A. No later than six months prior to the child's 3rd birthday, BabyNet will provide the District with the BabyNet Transition Referral Form confirming the approaching 3rd birthday of each child currently being served.

- B. No later than three months prior to the child's 3rd birthday, BabyNet will schedule via email/phone call a Transition Referral Conference (TRC) with the District for the purpose of reviewing the Individual Family Service Plan (IFSP), as appropriate, and considering eligibility under Part B.

- C. During the TRC, the Barnwell School District 45 BabyNet/Child Find team is responsible for:
 - Participating in the discussion of the current IFSP
 - Completing the Preschool Transition/Screening Form
 - Reviewing the District Transition and Screening Process with the parent
 - Obtaining Release of Information, if needed
 - Reviewing and distributing the District Procedural Safeguards
 - Obtaining parental consent for evaluation, if needed
 - Completing the "Create Part C to Part B Transition" form in Enrich

D. If a child does not have complete screening data at the time of the TRC the Barnwell School District 45 BabyNet/Child Find team's Child Find Screening Procedures will be followed.

E. If a preschool child moves into the District from another district/state and has been involved in BabyNet or another Part C agency, but not Part B, records will be requested immediately by the District BabyNet Coordinator and the District Child Find Screening Procedures will be followed.

F. If a preschool child moves out of the District to another district/state and has been involved in BabyNet or another Part C agency, the Barnwell School District 45 District BabyNet Coordinator will call the district and fax appropriate records.

G. If the Part C Agency in South Carolina, BabyNet, closes a case prior to the child's 3rd birthday, the District will continue the process and follow the state Transition Procedures.

BabyNet (Part C to Part B) Evaluations and Ensuring IEP in Place by Third Birthday

In the case of students who are being evaluated prior to their third birthday, the district uses the following steps to ensure that IEPs are in place by the child's 3rd birthday:

1. The district receives notification of referral through BabyNet (Part C) transition/referral email notification system or mail.
2. The district's BabyNet Coordinator/representative and the child's BabyNet case manager (Part C) arrange transition meeting to be held no later than three months before the child's third birthday.
3. The district's special education representative and the child's BabyNet case manager (Part C) conduct a transition meeting. Information in regard to the child is exchanged at this time.
4. The district's representative disseminates information to pertinent school team members that may be involved in evaluating the child.
5. The district's designated representative arranges an evaluation planning/consent meeting with the school multidisciplinary team, BabyNet case manager (Part C) and parent no later than one month before the child's third birthday.
6. During a meeting, a multidisciplinary team plans for a comprehensive, initial evaluation and seeks parental consent to complete the evaluation using the Referral/Evaluation Planning paperwork in Enrich.
7. If consent is granted, team members who are responsible for evaluating the child complete assessments in enough time (usually 2 to 3 weeks prior to the child's 3rd birthday) to conduct an eligibility determination and to draft an initial IEP should the child be found eligible.
8. During the week prior to the child's third birthday, the multidisciplinary team reconvenes to determine the child's eligibility for services and if appropriate, seeks consent for initial provision of services and drafts/develops an IEP.
9. Prior Written Notice is provided to parent.

TIMELINES FOR DD/PRESCHOOL SPEECH

Screening for DD or Speech (Parent/Community referral)	Within 60 days of referral
Transition Meeting (Baby Net)	No later than 90 days prior to the child's third birthday
Distribution of records following clinic	Records sent within one week*
Contact parent for evaluation	Within two weeks of receipt of packet or folder
Conduct evaluation	No later than 6 weeks prior to third birthday for Baby Net referrals
Review evaluation results	Within 3 weeks of evaluation. PRIOR to the child's third birthday for Baby Net referrals
State Dept. Deadline for Evaluation Results/Eligibility Mtg.	Within 60 days of receipt of permission form.
Services begin	PRIOR to or ON third birthday for Baby Net referrals

Referrals from the district's Save the Children, Montessori and Four-Year Child Development programs

These referrals are processed through the Student Assistance Team at the child's school.

Initial Evaluation and Eligibility

Referral for Initial Evaluation

A referral for an initial evaluation is made when a student is suspected of having a disability. Students may be referred for a comprehensive evaluation by the parent, through the Student Assistance Team (SAT) at the school, through Part C (BabyNet), Child Find, or through self-referral (adult students). This includes children who attend public or private schools, home-schooled students, highly mobile students, adult education students, and students in Residential Treatment Facilities (in or out-of-state students). When a request for an initial evaluation is received by the district, the date of receipt of the request is documented, and the SAT chairperson is notified of the request. The parent is contacted in a timely manner to discuss the referral and is invited to participate as a member of the SAT to determine if a referral for a comprehensive evaluation is recommended. School-age children who are referred for evaluation would typically participate in general education intervention prior to a referral, and the resulting data-based documentation would indicate that the general education instruction, interventions and strategies were not adequate for the student to progress in the general education environment without specialized instruction.

General Education Interventions for School Age Students

1. The purpose of general education intervention is to intervene early for any child who is presenting with academic, functional, or behavioral concerns. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during general education intervention assist district personnel in determining which children may be children with disabilities who need to move into an initial evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process. Both special education and general education personnel should be involved in this building-level, school-wide activity.
2. General education interventions may be carried out through providing a multi-tiered system of scientifically, research-based interventions for groups of students identified to be in need through screenings and through an individual child problem-solving approach. Regardless of the approach used, the focus is on designing supports for children who need additional assistance in order to be successful in the general education curriculum and environment.
3. Barnwell School District 45 uses a Response to Intervention (RTI) approach at the primary and elementary school that is based on a district RTI Framework. After referrals are made and screenings are conducted, each elementary school identifies students who are in need of intensive and differentiated small group or individual instruction. These students are scheduled into RTI groups and typically receive a leveled curriculum at varying levels of frequency and intensity, depending on the tier in which the student is placed. Each school's RTI team meets regularly to carefully analyze student data to monitor progress and make decisions regarding instructional needs and movement within the tiers. When a student receives Tier 3 interventions for an extended period of time without making sufficient progress, a referral for a comprehensive evaluation may be considered.

Comprehensive Evaluation

1. During the evaluation process for any disability, 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. All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child.
2. When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child. When selecting assessment tools to assist in gathering the evaluation data across any of the six typical sources of data (general education curriculum progress, general education interventions, records review, interviews, observations, and formative/summative tests). Teams conducting the evaluation must also:
 - A. Use a variety of assessment tools and strategies.
 - B. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 - C. Select materials and procedures used to assess a child with limited English proficiency that measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
 - D. Ensure that assessments and other evaluation materials are:
 1. selected and administered so as not to be discriminatory on a racial or cultural basis;
 2. provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 3. used for the purposes for which the assessments or measures are valid and reliable;
 4. administered by trained and knowledgeable personnel;
 5. administered in accordance with instructions provided by the producer of the assessments (Note: 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.)
 6. tailored to assess specific areas of educational need and not merely those designed only to provide a single general intelligence quotient;
 7. selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking

skills, the assessment 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).

3. The evaluation must be sufficiently comprehensive to be able to determine:
 - if the student has a disability;
 - all of the student's special education and related services needs, whether or not commonly linked to the disability category being considered;
 - the student's educational needs; and
 - the student's present levels of academic achievement and functional performance.
4. For children who transfer from one district to another in the same school year, assessments are coordinated with the child's prior district, as necessary and as expeditiously as feasible, to ensure prompt completion of an evaluation begun by the prior district.
5. The evaluation team must determine that the disability adversely affects the child's educational performance to the extent that the student requires specialized instruction involving adapted academic content, adapted methodology; or adapted delivery of instruction. The adverse effects of the disability on the child's educational performance may be due to:
 - a. impaired organizational or work skills;
 - b. inability to manage or complete tasks;
 - c. difficulty interacting with others;
 - d. impaired ability to maintain sustained attention and focus;
 - e. lack of academic progress;
 - f. difficulty communicating with others;
 - g. a learning rate that is substantially different from peers; and/or
 - h. lack of achieving adequately for his/her age or to meet grade-level standards
6. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
 - a. assistive technology assessment;
 - b. behavior ratings scales;
 - c. developmental/social history;
 - d. school history;
 - e. individual and group intellectual ability, achievement, and adaptive behavior measures;
 - f. curriculum based measures;
 - g. work samples and grades;
 - h. classroom observations;
 - i. teacher and parent interviews;
 - j. progress monitoring data; and/or;
 - k. behavioral data points/frequency counts.

7. The evaluation must include an assessment of the student's current educational needs in the areas of academic achievement and functional behavior which may come from the following sources:
 - a. review of available historical records such as work samples, standardized group assessment results, report cards, health records, and other educational information contained in the student's cumulative file as well as progress monitoring data and response to intervention/instruction data;
 - b. interviews with parents, teachers, and other staff;
 - c. observations of academic performance and/or behavior in a variety of settings to include information about how the student's disability impacts his/her rate of learning compared to the rate of his/her peers; and
 - d. direct assessment of skills using diagnostic measures such as standardized achievement tests and curriculum based measures and functional behavior assessment.

8. The evaluation must indicate that this is not a child who is experiencing a slight or temporary lag in one or more areas of development or a delay which is primarily due to environmental, cultural, or economic disadvantage, lack of experience in age appropriate activities, lack of appropriate instruction in reading or math, or limited English proficiency.
 - A. **Lack of appropriate instruction in reading**, including the essential components of reading instruction (phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension):
 - 1) evidence from an evaluation of the school's core curriculum and supplemental materials showing that the student's instruction; addressed all five essential components of reading instruction and
 - 2) documentation showing that the student actually received instruction provided by highly qualified teachers using appropriate core curriculum and supplemental materials;
 - 3) documentation of consideration of other factors such as frequent absences, frequent moves, incarceration, or substance abuse.
 - B. **Lack of appropriate instruction in math**:
 - 1) evidence from an evaluation of the school's core curriculum and supplemental materials showing that the student's instruction addressed math calculation, problem solving, and conceptual understanding and
 - 2) documentation showing that the student actually received instruction provided by highly qualified teachers using appropriate core curriculum and supplemental materials.
 - 3) documentation of consideration of other factors such as frequent absences, frequent moves, incarceration, or substance abuse.
 - C. **Limited English proficiency**:
 - 1) evidence that the student who is an English language learner was provided with appropriate accommodations and interventions to address his/her language difficulties;
 - 2) documentation of consideration of the student's proficiency in English and in his/her native language;
 - 3) documentation of consideration of the amount of time the student has spent in this country;

- 4) documentation of consideration of the level of education in the student's native country;
- 5) evidence that the disability exists in the student's native language as well as in English.

D. Excessive health related absenteeism from instructional time

- 1) Review of health-related school absences, including tardies, early dismissals, and absenteeism during instructional times
 - 2) Medications that affect cognitive functioning, review of observations in various school settings, behavior rating scales, and medical information
9. If the child is found eligible, this information is used as the basis for the areas addressed in the present levels of academic achievement and functional performance and for making all the decisions in the IEP. If the child is not found eligible, this information assists the district in determining other appropriate supports for the child. Ultimately, at the close of an evaluation, the team should have enough information to support the child whether or not the child is found eligible for special education services. The team should be able to describe where the child is currently performing within the general education curriculum as well as how (or if) the child's unique learning characteristics are impacting his or her ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment should also be described so that the extent of the child's needs may be realized.
10. A comprehensive evaluation planning team must consist of the following: the parents, at least one regular education teacher, a special education teacher/provider, Local Education Agency (LEA) representative, individual who can interpret instructional implications of evaluation results, and when appropriate, other individuals who have knowledge or special expertise regarding the student. This team reviews the existing data for the student to decide if additional data are needed to determine if the student has a disability, his/her educational needs, whether special education and related services are needed, and levels of academic achievement and functional performance. If the team determines that additional data are needed, the student will be assessed in all areas related to the suspected disability, and assessment tools used must provide relevant information that directly assists in determining the student's educational needs.
11. When a comprehensive evaluation has been recommended, the Special Services Department provides to the parent the following materials:
- Referral/Evaluation Planning document including Prior Written Notice
 - Consent for Evaluation
 - Procedural Safeguards
 - Health and Developmental History form, if not completed previously
 - Medicaid Consent Form and Notification Form
12. If the child's parents deny permission for the evaluation, attempts will be made to discuss the parents' concerns and to proceed with determining the educational needs of the child. If, after discussion with the parents, permission is denied, interventions available to general education students will continue to be implemented

until such time as another referral is made and a new parental consent for evaluation is requested.

Timeline for Conducting the Initial Evaluation

When a signed parental consent for evaluation form is received by an employee of Barnwell School District 45, the date of receipt is documented on the form. Within 60 calendar days of the district's receipt of parental consent to evaluate, the student is evaluated, and the eligibility determination meeting is held. Whenever possible, the IEP is developed at the eligibility meeting for eligible students. If the IEP is not developed at the eligibility meeting, it is developed within 15 calendar days of the eligibility meeting.

Exceptions to the timeline:

- If the parent repeatedly fails or refuses to produce the child for the evaluation
- If the student enrolls in another district after the evaluation has begun and before determination of eligibility. The new district should make sufficient progress to ensure prompt completion of the evaluation, and the parent and district must agree in writing to a specific timeline for completion of the evaluation

Barnwell School District 45 adheres to the 60-day timeline for completion of evaluation. In the rare event that an evaluation is not conducted within 60 days, extensive documentation is required to explain the reasons for the delay. If, in the process of the 60 days, the team is concerned that the timeline may not be met, the evaluator contacts the Director of Special Services for guidance and assistance.

Specific Evaluation Requirements for Each Area of Disability

In all cases, the intervention team is responsible for being sure, prior to evaluation, that they comprehensively review all present levels of academic and functional performance. Evidence that such a review has been conducted will be documented by completing the Referral/Evaluation Planning form in Enrich.

A. Developmental Delay (DD)

*Note, a child ages 2:11-5:11 may be identified as having a developmental delay even if he/she meets eligibility criteria under another disability category (with the exception of visually impaired or deaf/hard of hearing) at the discretion of the IEP team. A child age 6:0 through 7:11 may only be identified as having a developmental delay if he/she does not meet criteria under another category of disability and meets criteria under developmental delay. A child 8:0 through 9:11 may not be initially identified as having a developmental delay.

*If a child has been identified initially as having a developmental delay prior to his/her 8th birthday, he/she may continue to receive services under this category through age 9:11. Prior to his/her 10th birthday, the IEP teams must reevaluate the child to determine continued eligibility under another category of disability and need for continued special education and related services.

- a. Psychologists should consult the Standards for Evaluating and Eligibility Determination (SEED) document for complete guidelines on identifying students as DD. The guidelines require the following criteria:

- i. There is evidence that child is exhibiting a significant developmental delay in one or more of the following areas:
 - 1. Physical development
 - 2. Cognitive development
 - 3. Communication development
 - 4. Social or emotional development
 - 5. Adaptive behavior development
- ii. For children ages 6:0 to 7:11, there is evidence that the delay is not due to:
 - 1. Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA (NCLB));
 - 2. Lack of instruction in math;
 - 3. Limited English proficiency; or
 - 4. The presence of any other disability.
- iii. The adverse effects of the developmental delay on the child's educational performance require specialized instruction and/or related services.

b. Evaluation components

- i. A comprehensive norm-referenced or criterion-referenced developmental evaluation that assesses all five areas (physical, cognitive, communication, social/emotional, and adaptive behavior development) and that yields scores that are at least two standard deviations below the mean (+/- the standard error of measurement) in one area or at least one and half standard deviations below the mean (+/- the standard error of measurement) in two or more areas;
- ii. A developmental history of the child that includes a summary of his/her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver through an interview process; and
- iii. A structured observation of the child in a typical or otherwise appropriate setting (wherever the child spends the majority of his/her day) by member(s) of the multidisciplinary evaluation team.

B. Emotional Disability (ED)

- a. Psychologists should consult the SEED document for complete guidelines on identifying students as ED. The guidelines require the following criteria:
 - i. There is evidence that the child exhibits one or more of the following characteristics over a long period of time to a marked degree:
 - 1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - 2. An ability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings in 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
- ii. The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.
 - iii. The adverse effects of the emotional disability on the child's educational performance require specialized instruction and/or related services.
- b. Evaluation components
- i. Prior to consideration for an ED evaluation, the following data must be collected;
 1. A current behavior intervention plan must be developed in consultation with the school psychologist and have been implemented for at least six weeks prior to testing. A summary of the outcomes of the behavior intervention plan must be included in the psycho-educational report.
 2. Progress monitoring documentation showing that the specifically prescribed and consistently employed interventions in the behavior intervention plan have not resulted in significant improvement in the student's problem behavior.
 3. Anecdotal records collected over a period of at least ten school days within a period of thirty calendar days.
 4. Discipline referrals.
 - ii. Three direct observations in at least two different settings, both of which may be school settings, by a school psychologist, and/or an observer with expertise in behavior intervention that provides evidence that the problem behavior occurs at a significantly different rate, intensity, or duration than in a substantial majority of typical school peers.
 - iii. The student is rated within the highest level of significance on a valid and reliable problem behavior rating scale by both a certified teacher

and another adult knowledgeable of the student. In the event of discrepant ratings, additional ratings may be necessary in order to support a trend or pattern regarding a true emotional disability across settings. An explanation must be given for any discrepancies.

- iv. A structured parent/guardian interview to gain information not gathered through standardized assessment tools. This may include but is not limited to areas such as family background, functioning in the community, socio-cultural background, developmental history, educational history, special services and supports received behavior, psychosocial functioning, and other developmental information. This is a person-to-person collection of information, supplemented by paper reporting records.
- v. Documentation that the student's observable school and/or classroom problem behavior is occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.
- vi. When developmentally appropriate collect the following data:
 1. A self-report behavior rating scale completed by the student interpreted by the school psychologist.
 2. A structured student interview, to gain insight into the student's perception of the functioning of his/her behavior.
 3. A personality measure administered by a school psychologist, licensed psychologist, or licensed psycho-educational specialist. ***This could be a supplemental piece to the self-report behavior rating scale.***
- vii. Best practice would be to administer cognitive and achievement assessments.

C. Intellectual Disability (ID)

- a. Psychologists should consult the SEED document for complete guidelines on identifying students as ID. The guidelines require the following criteria:
 - i. Significant limitations in intellectual functioning must be evidenced by scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measurement) on an individually administered intelligence test.
 - ii. Significant deficits in adaptive behavior must be evidenced by a score at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains.
 - iii. Significant deficits in educational performance (pre-academic, academic and/or functional academic skills) must be evidenced by significant delays in functioning when compared to the child's same aged peers.

- iv. The adverse effects of the intellectual disability on the child's educational performance require specialized instruction and/or related services.
- b. Evaluation components
- i. A current, individually administered, norm-referenced full scale measure of intelligence with appropriate reliability, validity, and standardization characteristics with scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measure). Best practices would suggest within the last 12 months.
 - 1. If verbal or nonverbal measures are deemed inappropriate, alternative measures shall be used to obtain a verbal or nonverbal measure of intellectual functioning.
 - ii. A current comprehensive and standardized adaptive behavior measure completed by the child's parent or primary caregiver with scores at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains.
 - 1. Best practice would be an interview with the parent.
 - 2. When it is evident that the parent's report of adaptive behavior is not valid, the psychologist should take in account other sources of data (i.e. teacher interview, direct observation) when assigning a rating.
 - iii. A social and developmental history that includes family background on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the child's difficulties and to help determine onset of the disability.
 - iv. Significant deficits in educational performance (pre-academic and/or functional academic skills) must be evident. When age appropriate, use norm-referenced and/or curriculum-based measures.
- c. The following score ranges must be utilized in reporting a child with an intellectual disability under South Carolina Educational Finance Act:

Intellectual Standard Score*

Mild: 48-70₊ (Educable). Moderate: 25-48₊ (Trainable). Severe: 0-25₊ (Trainable)

*assumes mean of 100 and standard deviation of 15.

D. Other Health Impairment (OHI)

- a. Psychologists should consult the SEED document for complete guidelines on identifying students as OHI. The guidelines require the following criteria:
 - i. There is evidence that the child has a chronic or acute health problem.
 - ii. There is evidence that the diagnosed chronic or acute health problem results in limited alertness to the educational environment due to limited strength, limited vitality, limited or heightened alertness to the surrounding environment.

- iii. The adverse effects of the other health impairment on the child's educational performance require specialized instruction and/or related services.
- b. Evaluation components:
 - i. In the case of a child with Attention Deficit Hyperactivity Disorder (ADHD):
 - 1. A comprehensive written report from a licensed physician documenting a diagnosis of the medical problem.
 - a. Best practices would indicate that the physician's diagnosis was documented within the last 12 months.
 - 2. In the case where a diagnosis has not been made, a certified school psychologist may make a diagnosis.
 - a. In order for a psychologist to make this diagnosis, the following conditions must be present:
 - 1. In the case of a child with ADHD, the student is rated within the highest level of significance on a valid and reliable problem behavior rating scale in areas related to the diagnosis of ADHD by both his classroom teacher and parent.
 - 2. Documentation that the student's observable school and/or classroom problem behaviors related to ADHD are occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers.
 - 3. In general, the psychologist should attempt to secure Physician's Reports for Other Health Impairments whenever possible. Psychologists should only make the ADHD diagnosis when such reports are not available and when all data clearly point to ADHD as the qualifying condition.
 - 3. Evidence that the other health impairment adversely affects the child's educational performance. The medical diagnosis may not be used as the sole criterion for determining eligibility.
 - a. Documentation of the evidence that the student's other health impairment adversely affects his/her educational performance is necessary. This adverse effect may be evidenced by:
 - 1. On criterion referenced assessments (MAP, ACT Aspire, SC PASS, etc.) the student's skills are markedly below the instructional range of the class (e.g., below the 20th percentile).
 - 2. An overall pattern of poor grades significantly below average (D's and F's).

3. Ratings on 2 behavior scales, with at least one from a teacher providing primary academic instruction falling within the “at risk” range.
 4. On individually administered norm-referenced academic measures, the student scores 1 or more standard deviation below the norm, in 1 or more areas below the norm (plus or minus the SEM).
 5. Significant developmental or cognitive weaknesses (e.g., cognitive, adaptive skills, etc.)
- ii. In the case of a child with another medical diagnosis the following criteria is needed:
1. A comprehensive written report from a licensed physician documenting a diagnosis of the medical problem.
 2. Evidence that the other health impairment adversely affects the child’s educational performance. The medical diagnosis may not be used as the sole criterion for determining eligibility.
 - a. Documentation of the evidence that the student’s other health impairment adversely affects his/her educational performance is necessary. This adverse effect may be evidenced by :
 1. On criterion referenced assessments (MAP, ACT Aspire, SC PASS, etc.) the student’s skills are markedly below the instructional range of the class (e.g., below the 20th percentile).
 2. An overall pattern of poor grades significantly below average (D’s and F’s).
 3. Ratings on 2 behavior scales, with at least one from a teacher providing primary academic instruction falling within the “at risk” range.
 4. On individually administered norm-referenced academic measures, the student scores 1 or more standard deviations below the norm, in 1 or more areas below the norm (plus or minus the SEM).

E. Autism Spectrum Disorder

Evaluation team members for Autism: The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include an autism specialist who is knowledgeable and experienced in the education of children with Autism. The autism specialist could be a highly qualified teacher in the area of autism, or a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, or a speech-language therapist or pathologist who is knowledgeable and experienced in the education of students with Autism.

- A. **Definition:** Autism is a developmental disability, generally evident before age three that adversely affects a child's educational performance and significantly affects developmental rates and sequences, verbal and non-verbal communication and social interaction and participation. Other characteristics often associated with Autism are unusual responses to sensory experiences, engagement in repetitive activities and stereotypical movements and resistance to environmental changes or changes in daily routines. Children with Autism vary widely in their abilities and behavior. The diagnosis of Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disorder. [refer to 300.8(c)(1)(i)]

Autism, also referenced as Autism Spectrum Disorders, for the purpose of eligibility, may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), or Asperger's Syndrome provided the child's educational performance is adversely affected and the child meets the eligibility and placement requirements. Autism may exist concurrently with other areas of disability.

- B. **Eligibility criteria:** There is evidence that the child has any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder – Not Otherwise Specified as indicated in the following diagnostic references:
- a. **Asperger's Disorder:**
- (1) There is evidence that the child demonstrates impairments in social interaction, such as, marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); and/or lack of social or emotional reciprocity; and
 - (2) Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.
 - (3) The adverse effects of the Asperger's Disorder on the child's educational performance require specialized instruction and/or related services.
- b. **Autistic Disorder**
- (1) In addition to the characteristics listed in (a)(1) and (2) of this subsection, There also is evidence that the child demonstrates impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by

an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.

- (2) The adverse effects of the Autistic Disorder on the child's educational performance require specialized instruction and/or related services.

c. **Pervasive Developmental Disorder - Not Otherwise Specified**

- (1) There is evidence that the child demonstrates any of the characteristics listed in a) or b) of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.
- (2) The adverse effects of the Pervasive Developmental Disorder - Not Otherwise Specified on the child's educational performance require specialized instruction and/or related services.

C. **Evaluation components**

- a. Impairments in social interaction may be evidenced in the following required evaluation components:

- (1) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
- (2) A diagnostic interview(s) with parent/teachers;
- (3) A minimum of three, thirty minute, direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.
- (4) A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. Examples might include CARS, ADOS, SCQ, SRS, GARS and etc.

- (5) A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. Examples of standardized adaptive behavior scales include the Vineland II or ABAS-2 or a behavior rating scale (e.g., BASC-2) with an adaptive component for those not suspected of co-morbid mental disability.
 - (6) Other areas which may yield evidence, but are not required, include fine and gross motor skills assessments, visual-motor skills assessments, sensory processing measures, curriculum based measures, and standardized achievement measures.
- b. **Restricted repetitive** and stereotyped patterns of behavior, interests, and activities may be evidenced in the following required evaluation components:
- (1) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
 - (2) A diagnostic interview(s) with parent/teachers;
 - (3) A minimum of three, thirty minute, direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.
 - (4) A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. Examples might include: CARS, ADOS, SCQ, SRS, GARS and etc.
 - (5) Other areas which may yield evidence, but are not required, include fine and gross motor skills assessments, visual-motor skills assessments, sensory processing measures, curriculum based measures, and standardized achievement measures.

- c. **Impairments in communication** may be evidenced in the following required evaluation components:
- (1) A current communication evaluation conducted by a speech-language therapist/pathologist. This evaluation should include assessment in the areas of receptive, expressive, pragmatic, and social/functional communication skills;
 - (2) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability;
 - (3) A diagnostic interview(s) with parent/teachers;
 - (4) A minimum of three, thirty minute, direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Documentation regarding the nature and severity of the student's learning, behavioral, communication, and social skills shall be recorded. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training.
 - (5) A developmental or cognitive assessment that includes both verbal and non-verbal components completed by a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, or a licensed clinical psychologist. Examples include: DAS-2, DP-3, WISC-IV, K-ABC, SB-5.
 - (6) A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. Examples of standardized adaptive behavior scales include the Vineland II, Adaptive Behavior Assessment System II, AAMR Adaptive Behavior Scale-School: 2, Scales of Independent Behavior-Revised, and Inventory for Client and Agency Planning. A behavior rating scale (such as the Behavior Assessment Scale for Children-2) that contains an adaptive component might be used for those not suspected of also having a mental disability.
 - (7) Other areas which may yield evidence, but are not required, include sensory processing measures, curriculum based measures, and standardized achievement measures.

F. Speech-language impairment

1. Definition: Speech or Language Impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.
2. Criteria: There is evidence that the child has one or more of the following:
 - a. FLUENCY - interruption in the flow of speech characterized by an atypical rate, or rhythm in sounds, syllables, words, and phrases that significantly reduces the child's ability to participate within the learning environment with or without his or her awareness of the dysfluencies or stuttering
 - b. ARTICULATION - atypical production of phonemes characterized by substitutions, omissions, additions or distortions that impairs intelligibility in conversational speech and adversely affects academic achievement and/or functional performance in the educational setting
 - c. LANGUAGE – impaired comprehension and/or use of spoken language which adversely affects written and/or other symbol systems and the child's ability to participate in the classroom environment
 - d. VOICE –interruption in one or more processes of pitch, quality, intensity, resonance, or a disruption in vocal cord function that significantly reduces the child's ability to communicate effectively
 - e. The adverse effects of the speech-language impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction.
3. Evaluation team: The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must include a certified speech-language therapist or speech-language pathologist.
4. Evaluation components
 - a. Fluency
 - (1) Information to be reviewed includes, but is not limited to the following:
 - (a) Record review, interview, observations, and assessments document the frequency, type, and duration of dysfluencies, describe the student's fluency

patterns in at least two settings by two different observers, and document the student's secondary characteristics, if appropriate.

- (b) Assessments may include standardized test(s), connected speech sample, informal assessments.
- (c) Record review and/or interview document a history of academic and functional difficulty relative to fluency skills.
- (d) Information from multiple sources of data document that the student exhibits a fluency impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.

b. Articulation

- (1) Record review, interview, observations, and assessments document that the student's articulation skills are not commensurate with age appropriate expectations.
- (2) Assessments may include norm-based or standardized tests, connected speech samples, a phonetic inventory, an oral peripheral exam, a phonological analysis, stimulability testing,
- (3) Record review and/or interviews document a history of academic and functional difficulty relative to articulation skills.
- (4) Information from multiple sources of data documents that the student exhibits an articulation impairment which adversely affects pre-academic/academic, social-emotional, and/or vocational performance.

c. Language

- (1) Language assessments may include a combination of screening, norm-based, standardized, curriculum-based, functional communication (augmentative communication), informal, and language sampling measures.
- (2) Standardized test results should be at least 1.5 standard deviations below the mean.
- (3) The language assessment profile documents evidence of the student's receptive and expressive language skills in the areas of semantics, syntax, morphology, phonology, and social/pragmatic language functioning.
- (4) Record review and/or interviews document a history of academic and functional difficulty relative to language skills.
- (5) Information from multiple sources of data documents that the student exhibits a language impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.

d. Voice

- (1) Clearance from a medical doctor as well as a description of the student's vocal quality, intensity, resonance, and pitch are required
- (2) Assessments may include standardized test(s), connected speech samples, and informal assessments.
- (3) Record review and/or interviews document a history of academic and functional difficulty relative to voice skills.

- (4) Information from multiple sources of data documents that the student exhibits a voice impairment that adversely affects pre-academic/academic, social-emotional, and/or vocational performance.
- (5) Students with voice impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g. vocal nodules, polyps) or a prescription for voice therapy from a medical doctor does not necessitate the provision of voice therapy as special education or related service. If the student has a hearing loss documented in an audiological report as determined by a licensed audiologist and/or otolaryngologist, the medical evaluation is not required.

5. **Additional Information:**

- a. A delay in the rate of acquisition of language or speech skills is not, in and of itself, a communication disorder. A communication difference/dialect is a variation of a symbol system used by a group of individuals which reflects and is determined by shared regional, social or cultural/ethnic factors and should not be considered an impairment of speech or language.
- b. A written prescription from a medical practitioner is a medical opinion regarding the medical evaluation or treatment that a patient should receive. When directed to a school, these medical orders should be considered by the team as part of the information gathering process. The team determines the need for an evaluation for special education services.
- c. **Fluency:** Excessive tension, struggling behaviors and secondary characteristics may accompany fluency impairments. Secondary characteristics are defined as specific behaviors or movements that accompany disfluencies, including avoidance behaviors. Fluency impairment includes disorders such as stuttering and cluttering.
- d. **Articulation:** Atypical production of speech sounds may result from phonology, motor, or other issues. The term articulation impairment does not include the following:
 - (1) Regional, dialectic, and/or cultural differences;
 - (2) Articulation errors at or above age level according to established research-based developmental norms, speech that is intelligible and without documented evidence of adverse effect on educational performance;
 - (3) Articulation errors as a result of oral structures such as missing teeth, un-repaired cleft lip and/or palate.
- e. **Language:** The impairment may involve, in any combination, the form of language (phonology, morphology, and syntax), the content of

language (semantics), and/or use of language in communication (pragmatics) that is adversely affecting the student's educational performance. The term language impairment does not include:

- (1) Normal stages of second language acquisition/learning and communication problems which result from English being a secondary language unless it is also determined there is a speech-language impairment in the native/primary language;
- (2) Regional, dialectic, and/or cultural differences;
- (3) Anxiety disorders, unless it is also determined that the student has a speech-language impairment.

f. **Voice:** Voice impairment includes aphonia or the abnormal production of vocal quality, pitch, loudness, resonance, and/or duration, which is inappropriate for an individual's age and/or gender. The term voice impairment does not refer to the following:

- (1) anxiety disorders, e.g. selective mutism;
- (2) differences that are the direct result of regional, dialectic, and/or cultural differences;
- (3) differences related to medical issues not directly related to the vocal mechanism, e.g. laryngitis, allergies, asthma, laryngopharyngeal reflux, colds, abnormal tonsils or adenoids, short-term vocal abuse or misuse;
- (4) vocal impairments that are found to be the direct result or symptom of a medical condition unless the impairment impacts the student's performance in the educational environment and is amenable to improvement with therapeutic intervention.
- (5) Students with voice impairment must have a medical evaluation to rule out physical structure etiology by a medical specialist either prior to a comprehensive evaluation or as part of a comprehensive evaluation. The presence of a medical condition (e.g. vocal nodules, polyps) or a prescription for voice therapy from a medical doctor does not necessitate the provision of voice therapy as special education or related service. If the student has a hearing loss documented in an audiological report as determined by a licensed audiologist and or otolaryngologist, the medical evaluation is not required

G. Traumatic Brain Injury

1. 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 a child's 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 to brain injuries induced by birth trauma.

2. **Criteria:** There is evidence that the child had a traumatic brain injury and the adverse effects of the traumatic brain injury on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - a. adapted academic content;
 - b. adapted methodology; or
 - c. adapted delivery of instruction.

3. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a traumatic brain specialist who is knowledgeable and experienced in the education of children with traumatic brain injuries. The traumatic brain injury specialist could be a highly qualified teacher, a certified school psychologist, a licensed school psychologist, a licensed psycho-educational specialist, a neuropsychologist, or a speech- language therapist or pathologist who is knowledgeable and experienced in the education of students with traumatic brain injuries.

4. **Evaluation components:** A medical diagnosis of a traumatic brain injury by a licensed physician.
 - a. In the absence of an existing medical diagnosis or a prior diagnosis of a brain injury, both of the following are furnished:
 - (1) documented history (e.g. parent /caregiver interview, medical history, brain injury screening) that evidences trauma to the head resulting in impairments according to the definition of the term "traumatic brain injury" and
 - (2) a cognitive profile that is consistent with the brain injury to include assessment of the student's language processing and use (not receptive or expressive vocabulary tests), memory, attention, reasoning, abstract thinking, judgment, problem-solving skills, academic achievement, adaptive behavior, auditory perception, and visual perception.

H. Deaf or Hard of Hearing

1. **Definition:** *Deaf* means a hearing loss that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's academic or functional performance. *Hard of Hearing* means a hearing loss, whether permanent or fluctuating, that adversely affects a child's academic or functional performance with or without amplification, but that is not included under the definition of deaf in this section.

2. **Criteria:** There is evidence that the child:
 - a. has a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally, or
 - b. has a fluctuating hearing loss, either unilaterally or bilaterally.

3. **The adverse effects** of the deafness or hard of hearing impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - a. adapted academic content;
 - b. adapted methodology; or
 - c. adapted delivery of instruction.

4. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a certified teacher of deaf and hard of hearing students and other professionals skilled and experienced in the impact of hearing loss and the assessment of deaf and hard of hearing students, which may include a licensed audiologist, speech-language pathologist, school psychologist, etc.

5. **Evaluation components:** The evaluation must include:
 - a. A written report of a current audiological evaluation conducted by a licensed audiologist/ otolaryngologist that shows a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally and that includes:
 - (1) frequency-specific hearing threshold levels determined by pure tone air & bone conduction testing, or electrophysiological assessment when developmentally appropriate.
 - (2) speech reception thresholds or speech detection thresholds,
 - (3) word recognition testing in quiet and in noise, when developmentally appropriate.
 - (4) tympanometry, including reflex testing when appropriate, and
 - (5) aided speech and frequency-specific sound field results, when developmentally appropriate.
 - b. If the student does not respond to all aspects of the audiological evaluation listed above, other appropriate measures – in consultation with an audiologist/otolaryngologist must be utilized.
 - c. A fluctuating hearing loss may be documented by a medical history documenting etiology and prognosis of condition, either unilaterally or bilaterally obtained from a licensed physician (preferably an otolaryngologist).
 - d. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
 - (1) a comprehensive assessment of communication skills (augmentative, signed or spoken) that results in a written communication plan and includes functional, expressive and receptive communication in the student's present mode of communication by a certified teacher of the deaf and hard of hearing or licensed speech-language pathologist skilled and experienced in the impact of hearing loss and the assessment of deaf and hard of hearing students (required). The communication plan must include information on the following components:
 - (a) primary language,
 - (b) communication mode (expressive & receptive),

- (c) opportunities for direct instruction in communication mode,
- (d) and supports necessary to access education environment.
- (2) a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment administered in the child's present method of communication
- (3) auditory/behavioral/developmental checklists completed by a certified teacher of the deaf and hard of hearing, school psychologist, or other individual skilled and experienced in the assessment and the impact of hearing loss
- (4) assistive technology assessment
- (5) behavior ratings scales
- (6) developmental/social history
- (7) school history
- (8) individual and group intellectual ability, achievement, and adaptive behavior measures
- (9) curriculum based measures
- (10) work samples and grades
- (11) classroom observations
- (12) teacher and parent interviews
- (13) progress monitoring data
- (14) behavioral data points/frequency counts

I. Visual Impairment

1. **Definition:** Visual impairment, including blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
2. **Criteria:** There is evidence that the child has one of the following:
 - a. The visual acuity with correction is 20/70 or worse in the better eye; or
 - b. The visual acuity is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision or a visual field of 40 degrees or less; or
 - c. The visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings; or
 - d. There is evidence of cortical visual impairment and
 - e. The adverse effects of the visual impairment on the child's educational performance require specialized instruction and/or related services as evidenced by:
 - (1) adapted academic content;
 - (2) adapted methodology; or
 - (3) adapted delivery of instruction.
3. **Evaluation Team:** The multidisciplinary evaluation team must include the members of the IEP team and other qualified professionals, as appropriate. The team must also include a certified teacher of students with visual

impairments and other professionals knowledgeable of the educational needs of students with visual impairments.

4. **Evaluation components:** Evidence of the visual impairment may be found in the following required evaluation components:
- a. A written report of a current visual examination conducted by a licensed ophthalmologist or optometrist.
 - b. For a diagnosed cortical visual impairment, the examination may be conducted by a neurologist.
 - c. A functional vision assessment conducted by a certified teacher of students with visual impairments (required).
 - d. An assessment conducted by a certified teacher of students with visual impairments to determine appropriate learning media and to evaluate Braille skills (required).
 - e. An assessment of the expanded core curriculum (ECC) by a certified teacher of students with visual impairments (required). For a student with multiple disabilities, alternative assessments may be considered in lieu of the ECC assessment.
 - f. Evidence of how the student's disability adversely affects his/her educational performance and involvement in the general curriculum/appropriate activities may be found in the following:
 - (1) vision/behavioral/developmental checklists completed by a certified teacher of students with visual impairments, school psychologist, or other individual skilled and experienced in the assessment and the impact of vision impairment,
 - (2) assistive technology assessment,
 - (3) behavior ratings scales,
 - (4) developmental/social history,
 - (5) school history,
 - (6) individual and group intellectual ability, achievement, and adaptive behavior measures,
 - (7) curriculum based measures,
 - (8) work samples and grades,
 - (9) classroom observations,
 - (10) teacher and parent interviews,
 - (11) progress monitoring data, and/or
 - (12) behavioral data points/frequency counts.

J. Orthopedic Impairment

1. **Definition:** Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
2. **Criteria:** There is evidence that the child has a severe orthopedic impairment and the adverse effects of the orthopedic impairment on the

child's educational performance require specialized instruction and/or related services as evidenced by:

- a. adapted academic content;
- b. adapted methodology; or
- c. adapted delivery of instruction

3. **Evaluation component:** A comprehensive written report from a licensed physician documenting a diagnosis of an orthopedic impairment caused by disease such as poliomyelitis or bone tuberculosis and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

K. Deaf-blindness

1. **Definition:** Deaf-blindness means concomitant hearing loss and visual impairment, 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 who are deaf or hard of hearing or children who are blind or visually impaired.
2. **Criteria:** There is evidence that the child meets the criteria specified above for both the Deaf or Hard of Hearing category and the Visual Impairment category.
3. **Evaluation team** and evaluation components are the same as for Visual Impairment and Deaf or Hard of Hearing.

L. Multiple Disabilities

1. **Criteria:** There is evidence that the child meets all eligibility requirements for two or more disabilities. The term does not include developmental delay, deaf-blindness, or speech/language impairment.
2. **Evaluation Team and components:** see individual disability categories for requirements and sources of evidence.

M. Specific Learning Disability (SLD)

1. Psychologists should consult the SEED document for guidelines on identifying students as SLD. The guidelines recommend the following criteria:
 - i. The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas: Basic reading skills, reading fluency, reading comprehension, mathematics calculation, mathematics problem-solving, written expression, oral expression, or listening comprehension.

1. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based interventions
or
 2. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of SLD, using appropriate assessments.
- ii. The child's underachievement is not due to: visual, hearing or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; limited English proficiency; or lack of appropriate instruction in reading or math.
 - iii. The adverse effects of the SLD on the child's educational performance require specialized instruction and related services.

2. Evaluation Components

- i. Documentation of instruction based on state-approved grade level standards in general education settings.
- ii. Documentation of pre-referral, or as part of the referral process, instruction based on scientifically-based instruction in reading and math in general education settings; the interventions must be matched to the referral problem and should include a description of the type, intensity, and duration of the intervention provided.
- iii. Data-based documentation of severe academic skill deficits when compared to peers, including:
 1. State and district achievement measures, such as benchmarks, ITBS, SC PASS, ACT Aspire, etc.
 2. Progress monitoring data from curriculum-based and/or criterion based measures showing slow rate of growth in at least one academic domain despite intensive instruction/intervention in the area.
 3. Documentation that the child's underachievement is not due to: visual, hearing or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; limited English proficiency; or lack of appropriate instruction in reading or math.
- iv. At least one observation of the student's academic performance in the area of suspected disability, providing information concerning how the child's suspected disability impacts his or her performance in this area. In the event that the student qualifies in multiple areas; an observation will be conducted in at least one area of suspected disability. A certified staff member other than the referring teacher

may conduct the observation.

- v. A current, individually administered, norm referenced full scale measure of intelligence with appropriate reliability, validity, and standardization characteristics. Best practice would suggest within the last 12 months.
 - vi A current, individually administered, norm referenced full scale measure of achievement with appropriate reliability, validity, and standardization characteristics. Best practice would suggest within the last 12 months.
 - vii Documentation that the student's scores on individually administered, standardized measures demonstrate a severe discrepancy between ability and achievement.
 - viii. Documentation of the evidence that the student's learning disability adversely affects his or her educational performance is necessary. In Barnwell School District 45, this adverse effect may be evidenced by classroom grades, history of retentions, significantly sub-average performance on state and district achievement measures and/or slow progress in response to scientifically based interventions.
3. If a discrepancy is not obtained in the initial testing, Response to Intervention (RTI) data may be presented to the School Assistance Team (SAT) for approval of special education service eligibility. There must be evidence that the child does not make sufficient progress to meet age or state approved grade-level standards when using a process based on the child's response to scientific, research-based intervention as outlined in the Barnwell School District 45 RTI Guidelines. The following must be documented and presented to SAT.

Eligibility Determination

In Barnwell School District 45, eligibility determination is made within 60 days of the date the district receives the parent consent for evaluation. If the student is eligible for special education services, when possible, the IEP is developed in conjunction with the eligibility meeting. Eligibility for special education is two-pronged. The student must (1) meet eligibility criteria in one of the 13 disability categories as specified in Standards for Evaluation and Eligibility Determination (SEED) and (2) need special education services. If the student has a disability but does not need special education and related services, he/she may be considered for eligibility for a 504 plan.

The findings of the team are documented on the Eligibility Determination form. This form includes the special factors that must be discussed before determining that a student has a learning disability.

A copy of the Evaluation Report and Eligibility Determination are provided to the parent as well as the Prior Written Notice which reflects the outcome of the evaluation.

Independent Educational Evaluation (IEE)

If the student's parents disagree with an evaluation conducted by the district, they have the right to request an independent educational evaluation at the district's expense. An IEE is an evaluation conducted by a qualified examiner who is not an employee of the district responsible for the education of the student. If the parent obtains an IEE at public expense or provides the district with an evaluation paid for privately and the evaluation meets the district's criteria, the district will consider the results with respect to eligibility and provision of FAPE to his/her child.

If a parent requests an IEE, the district must do one of the following:

- Provide information to the parent about where an IEE can be obtained and the agency's criteria required
- Ensure that an independent evaluation is provided at public expense, unless a special education due process hearing officer determines that the IEE provided by the parent did not meet the agency's criteria
- Initiate a due process hearing to show that the district's evaluation is appropriate. If the hearing officer determines that the district's evaluation is appropriate, the parents would have to pay for an IEE.

A parent is entitled to only one IEE at public expense each time the district conducts an evaluation with which the parent disagrees. If a parent requests an IEE, the district may ask the reason for the objection to the district's evaluation but cannot require an explanation from the parent.

The Individualized Education Program (IEP)

The IEP is a written plan for each student with a disability that describes the student's educational program in accordance with special education laws and regulations. The IEP should function as the individualized guide for specially-designed instruction for each student with a disability.

IEP Team

1. Required members of the IEP team are as follows:

- Parents*
- Student (must be invited beginning at age 13); a separate notice must be provided to the parent/guardian of an adult student
- Special education teacher
- General education teacher
- Local Education Agency representative (LEA Rep) or designee (The LEA rep or designee must be qualified to provide or supervise provision of special education services and have knowledge of the general education curriculum and availability of the district's resources)
- A person who can interpret the instructional implications of assessment results. For initial placements of students evaluated by the school psychologist or speech pathologist, a school psychologist or speech pathologist must participate, respectively.
- Related services personnel (such as OT, PT, O&M) must participate for students who are initially receiving the service or for whom the service is being deleted from the IEP.

2. Other team members may participate as needed, based on the child's individual needs.
3. Representatives of outside agencies who may be responsible for postsecondary services will be invited with the prior written consent of the parent or adult student.
4. If a required member of the IEP team cannot participate in part or all of the meeting and their area of expertise IS NOT being discussed, the parent and LEA must agree that the member's attendance is not necessary, and the Parent/School Agreement of Excusal of IEP Team Members must be completed and signed PRIOR to the IEP meeting. If a required team member is excused, following the meeting, that team member will receive a copy of the Summary of Meeting. If the required IEP team member's area of expertise IS being discussed, then the parent and LEA must give **consent** for the excusal, and the member must submit to the team written input pertaining to the development of the IEP **before** the meeting. If an excused team member's absence affects the development of the IEP, the team must reconvene in a timely manner after the needed information is obtained by having the team member attend the meeting or submit the information in writing.

*If the child's parents need a sign language or foreign language interpreter in order to participate in the meeting, the district provides that service.

Notice of IEP Meetings

The district will provide notice to the parent of all IEP meetings and will take steps to ensure that the parent is afforded the opportunity to participate. All students aged 13 and older must be **invited** to their meeting; the parent makes the final decision as to whether their child will **attend** the meeting. When the child reaches the age of 18 and rights have been transferred to the student, all notices go to both the student and parent.

Timelines and Meetings

For the purpose of reviewing and revising the current IEP, a meeting (annual review) must be held at least every 365 days. Barnwell School District 45 conducts annual IEP meetings at the end of the school year, no more than 6 weeks prior to the last week of school. An IEP must be implemented by the third birthday for an eligible child transitioning from Part C to Part B services. In addition to annual reviews, special reviews and re-evaluation meetings are held as needed.

Components of the IEP

The day, month, and year that the IEP will begin and end must be specified, as well as the day, month, and year of the IEP meeting. The projected day, month, and year of the annual review and re-evaluation must also be stated.

For students who will be 13 or older during the effective dates of the IEP, the **transition** component of the IEP must be addressed. Postsecondary transition may be addressed for younger students as necessary. Students' career interests and preferences will be assessed through formal and informal testing, observations, and interviews. These interests and preferences will drive the selection of the appropriate SC Career Cluster choice. A course of study must also be included to facilitate the transition from school to post-school by describing the courses and/or educational experiences related to the student's postsecondary goals.

Postsecondary goals for education or training, employment, and if needed, independent living will be developed by the IEP team and specified on the IEP. Transition services needed to assist the student to achieve his/her postsecondary goals will also be described. These services and activities will include, as needed, instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and functional vocational assessment.

Present levels of academic achievement and functional performance will be developed using data from a variety of formal and informal vocational assessments to identify the student's strengths and needs in the area of transition.

Annual academic and functional goals for age-appropriate students will be identified as both "instructional" and "transition." Related services goals should be identified as both "related services" and "transition," as progress toward the achievement of these goals will assist the student in achieving postsecondary goals.

The IEP team will determine if the student will work toward a regular State high school diploma and identify the anticipated year of graduation. If the student will be unable to complete all requirements for high school graduation, the team will specify either a State certificate or a District credential as appropriate.

As appropriate, representatives from outside agencies who may become responsible for providing or paying for postsecondary services for the student must be invited to meetings when transition will be discussed. The parent or adult student must give written permission for these representatives to be invited to the meeting on the Consent for Agency Invitation to Individualized Education Program (IEP) Meetings. The permission must be maintained in the student's confidential record and will be in effect for the school year.

The **academic, developmental, and functional strengths and needs** section of the IEP must provide a description of the student's strengths and needs that allow the reader to gain a general understanding of the student and how the disability impacts his/her ability to access and progress in the general curriculum. The findings section of the IEP will identify areas of weakness in academic achievement and, if appropriate, functional performance. Teachers must use multiple methods of assessment that include baseline data from which measurable goals are written.

Measurable annual goals must address needs identified in the Findings section of the IEP and describe what the student is expected to achieve in one calendar year. Annual goals must include (1) the condition, (2) specific behavior (must be observable), (3) criteria for mastery, (4) time frame, and (5) assessment tool. Short-term objectives are not required unless the student will participate in the State's alternate assessment program or has taken an alternate assessment. Objectives must be observable, measurable and include an evaluation method, mastery criteria, and be directly linked to the data in the Findings section.

Accommodations and/or modifications to the general curriculum as well as **supplementary aids and services** must be specified if needed to provide a free, appropriate public education (FAPE) to the student and to enable the student to participate with nondisabled peers to the maximum extent appropriate. Examples of supplementary services include training of regular education personnel, shadowing, and nursing services.

Special education services and, if appropriate, **related services**, must be specified. The instructional delivery must be described, such as consultation (for students receiving indirect special education services), direct instruction, or small-group instruction. The length and frequency of services must also be specified. For Medicaid purposes, a billable service such as Occupational Therapy must be designated as individual or group. The amount of special education and related services will be expressed in minutes per week.

Transportation is a related service when it is needed in order for the child to benefit from special education services. Special needs transportation is considered on an individual basis and is usually the result of the following:

- Child attends a special education program that is not in his/her zoned school
- Child uses a wheelchair and needs a bus with a lift spring or has a medical condition requiring special transportation
- Child's behavior is such that he/she cannot be transported safely on a regular bus

In these situations, transportation services should be included on the child's IEP as a related service. If the IEP team determines that the parent will provide transportation that should be indicated on the IEP.

The student's **participation in statewide testing** must be noted, including any necessary accommodations and/or modifications (as allowed in State Department of Education regulations). Only accommodations and/or modifications that have been specified as necessary, effective, and routinely used in the classroom can be utilized for testing purposes.

Special factors that the IEP team must consider must be addressed. If behavior is noted as a concern, it must be addressed elsewhere in the IEP with a behavior intervention plan (BIP), accommodation, modification, supplementary aid/service, or annual goal.

The IEP team must consider annually the student's eligibility and need for **Extended School Year (ESY) services**, which may consist of special education and/or related services. Services must be determined on an individual basis and will not be limited to certain disability categories or ages or to certain amounts, types, or durations. Determination of eligibility and need for ESY services must be made based on documented evidence of regression of skills without periods of instruction, critical emerging skills, behaviors that have significantly interfered with student's instruction, and transition needs where appropriate. Data obtained from such sources as current and previous teacher assessments, direct observation with corresponding data, IEP goals/objectives progress data, behavior logs, discipline records, attendance records, health factors, parent input, and test scores will be used to determine eligibility. Particular attention should be paid to data points both immediately before and after interruptions in instruction, such as summer break. For 3-year old students who will not begin special education services until the following school year, the IEP team may consider the need for ESY to prevent further delays or regression. If ESY services are required, the IEP team will develop an ESY Addendum to the IEP specifying needed services.

Progress must be monitored in the method indicated in the IEP and reported to parents of students with disabilities at least as often as progress is reported to parents of non-disabled students. These reports should include a description of the student's progress toward his/her measurable annual goals.

The IEP must specify the **least restrictive environment (LRE)** in which the student will be placed to ensure that he/she receives a FAPE. LRE will not be determined based on disability category.

For students with chronic or severe behavior problems that impede their learning or that of others (as determined by the IEP team), the IEP must include a **Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)**. The FBA should assess the function of the behavior, and, based on the FBA, the BIP should incorporate positive interventions and supports designed to prevent the behavior from recurring and to teach positive behaviors that will replace those that may be interfering with the student's progress and achievement of instructional goals.

Regular education teachers must be notified of their responsibility to implement components of the IEP, especially accommodations, modifications, and the BIP. The IEP must be

accessible to the student's regular education teachers and related service providers who are responsible for its implementation. Copies of accommodations and BIPS are provided to the student's regular education teachers at the beginning of the year or semester/period in which they will be teaching him/her.

Special Education and Related Services

Special education and related services will be provided to the student in accordance with his/her IEP. These services must include specially-designed instruction to meet the unique needs of a student with a disability, be based on peer-reviewed research to the extent practicable and provided in the least restrictive environment. The district will ensure that all special education staff are highly qualified to instruct students with disabilities.

Students with disabilities will be served through age 20 (students turning 21 on or before September 1st will not be served; students turning 21 after September 1st will be served for that school year).

Related Services

Related services are supportive services required to assist a student with a disability to benefit from special education. Examples of related services include occupational therapy, physical therapy, transportation, interpreting services, and orientation and mobility.

Supplementary Aids and Services

Supplementary aids and services refers to aids, services, or other supports provided to enable students with disabilities to be educated with their non-disabled peers to the maximum extent appropriate. Examples of supplementary aids and services include assistive technology devices and services and para-educator services.

IEP Team Decision Making

If the IEP team cannot reach consensus, the person who represents the District (LEA representative) has the authority to make a decision and provide PWN to the parent.

Student Transfer Procedures

Transfers from within SC

When a student with a disability transfers from another district in the state to Barnwell School District 45, the district, in consultation with the parent, will provide comparable services to the student without delay. The services will be comparable to those described in the student's most recent IEP. The Office of Special Education Programs (OSEP) has determined that "comparable" means "similar" or "equivalent". When the Special Services (SS) Department is notified of a transfer student, the following procedure will be followed:

1. At enrollment, consultation between the special education teacher (or designee) and the parent will take place regarding the student's previous placement, special education records, and placement/services in Barnwell School District 45. The Transfer Consultation Form, which documents the parent's participation in the consultation, will be completed by the special education teacher (or designee) and signed by the parent. The Special Services (SS) department will be contacted if assistance is needed with determining placement. The remaining contents of the

records are requested. The following forms are completed: Request for Confidential Records, Transportation form, Social, Health, and Educational History, Medicaid Consent and Notice.

2. SS will be notified of the transfer student during or immediately following the consultation, and the Request for Confidential Records form will be faxed to SS. SS staff will request the student's special education records.
3. A comparable services IEP is completed in consultation with the Special Services designee, teacher, and parent. The parent and other service providers receive a copy.
4. Within 30 calendar days of the student's enrollment in Barnwell School District 45 (or within 30 days of the first day of school if the transfer occurs during the summer), the IEP team will meet to develop a Barnwell School District 45 IEP for the student. The ending date of the IEP should coincide with the end of the school year.

Transfers from out-of-state

When a student with a disability transfers from another state to Barnwell School District 45, the district, in consultation with the parent, will provide comparable services to the student without delay. The services will be comparable to those described in the student's most recent IEP. If the parent and district do not agree on what constitutes "comparable" services, the issue can be resolved through mediation or due process procedures, and stay-put would not apply. Within 30 calendar days of the student's enrollment in Barnwell School District 45, the IEP team will meet to develop a revised IEP.

If the IEP team has reason to suspect that the student is not eligible for special education services under SC guidelines, the team will conduct an initial evaluation, with parent consent, to determine the student's eligibility. If the parent refuses to provide consent for the evaluation, the district may pursue the evaluation by utilizing procedural safeguards including mediation or due process procedures. In this case, stay put does not apply- the student must be placed in regular education while the due process procedures are followed.

If a parent is unable to provide a copy of the student's IEP from the previous state and the student's special education status cannot be confirmed, the student must be placed in regular education. If the multidisciplinary team has reason to suspect that the student has a disability, the team will conduct an initial evaluation, with parent consent, to determine the student's eligibility.

The Transfer Student Feedback Form indicates the services that must be provided to the student such as speech, OT, PT, and whether the student has a Behavior Intervention Plan (BIP). All services on the IEP must be implemented immediately.

The SS staff will change the case manager in the Enrich program. The clerical assistant at the previous school will deliver all of the student's special education records to the new school.

Services to Students Residing in Residential Treatment Facilities (RTFs)

SC Proviso 1.51 requires that each SC resident of lawful school age residing in a licensed RTF for children and adolescents shall be entitled to receive educational services from the school district in which the RTF is located. Barnwell School District 45 currently has no RTFs located within its boundaries.

Services in Local Detention Facilities, Department of Juvenile Justice (DJJ), and Department of Corrections Facilities

School Districts are responsible for providing a FAPE to students with disabilities detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction. Requirements concerning placement and LRE may be modified in accordance with the student's incarceration. DJJ is responsible for providing special education services to students in juvenile justice facilities, and the Department of Corrections is responsible for providing special education services to students in state adult correctional facilities.

Charter School Plan

Barnwell School District 45 does not currently have a Charter School within its boundaries; however, the plan for serving students with disabilities attending a charter school within the district is as follows:

The district will provide students with disabilities who attend public charter schools (including virtual schools authorized by the district) with a FAPE and meet the requirements of IDEA in the same manner as for students in its other schools. This includes the following:

- Providing supplementary and related services at the charter school site to the same extent as is provided at the site of its other schools
- Providing funds to the charter school on the same basis as funds are provided to the district's other schools
- Distributing other federal funds to the charter school as funds are distributed to the district's other schools, consistent with the state's charter school law

Educational Placement and Least Restrictive Environment (LRE)

Least Restrictive Environment (LRE) refers to providing special education services in the environment that allows the student to be educated with non-disabled peers to the maximum extent appropriate, including extracurricular and non-academic activities. LRE decisions must be made at least annually by the IEP team, and the LEA must make available a continuum of placement options to meet the unique educational needs of students with disabilities. LRE placement must be based on the student's identified needs, not on his/her disability category. The LRE options for preschoolers should include programs in the community as well as in the school setting in order to maximize their integration with non-disabled peers.

The IEP team will determine and document on the IEP the extent to which the student will participate in academic, nonacademic, and extracurricular activities in the general education environment. The amount of time the student will spend in the special education program and in the regular education program will be stated in terms of hours or periods per week.

The IEP team must consider the following when determining LRE:

- whether the student's IEP can be implemented in the regular classroom with the use of supplementary aids and services
- the student's abilities
- the nature and severity of the student's disability
- the potential effects of providing appropriate supplementary aids and services to the student in the regular education environment
- integration with non-disabled peers
- whether placement in the regular classroom, even with appropriate behavioral interventions, will significantly impair the learning of classmates
- whether placement in the regular classroom will result in any potentially harmful effect on the student or quality of his/her services
- the school the student would normally attend if non-disabled

Placement decisions are made by the IEP team, including a school psychologist as a mandatory participant. The first placement option considered should be the general education classroom in the school closest to the student's home. Students will be placed in the regular education environment to the maximum extent appropriate for the individual. Removals of students with disabilities from the general education environment will occur only if the nature and severity of the disability is such that participation in general education classes, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

To the maximum extent appropriate, related and supplementary services will be provided within the classroom rather than solely in a "pull-out" model, thereby minimizing loss of instruction and maximizing generalization of skills.

Early Childhood Least Restrictive Environment

1. For preschool children ages 3 through 5 with disabilities, placement and LRE requirements are the same as for school-aged children. This means that preschool children with disabilities must have a continuum of placement

options available and have the right to be educated with their peers without disabilities to the maximum extent appropriate. As with school-aged children, the needs of preschoolers are to be considered individually, and the Individual needs of the child would determine the most appropriate setting for services to be provided. Most preschoolers benefit from placement in a preschool program with typically developing peers.

2. Barnwell School District 45 provides early childhood services to children without disabilities in 4-year-old at-risk preschool programs and may consider placement in this program for LRE purposes. The district may seek alternative means to provide inclusive options for young children through collaborative relationships with private preschool programs or other community-based settings at the district's discretion. If a preschool child with a disability is already attending a general education preschool program, the IEP team should consider whether special education and related services can be provided in that setting with the use of supplementary aids and services, or supports for district personnel.
3. Various educational placement options are possible and the team will choose the appropriate option to meet the LRE requirements, both within the community and at the school. The key question for the IEP Team to consider is where this child would be if she or he did not have a disability. The full continuum of placement options, including integrated placement options with typically developing peers, must be available to preschool children with disabilities. Examples include
 - a. Head Start,
 - b. community-based preschools (may be in churches, whether or not religiously affiliated),
 - c. child care centers or family child care homes, mothers'-day-out programs,
 - d. Title I programs,
 - e. at-risk 3-4-year-old preschools,
 - f. migrant or bilingual programs,
 - g. play groups, and
 - h. other such early childhood programs.
4. For children who are age 5 by September 1, kindergarten would be the least restrictive environment, to the extent appropriate.

Alternative School Placement (Barnwell 45 Alternative Program)

Placement into Barnwell45 Alternative Program

1. A Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) must be developed and implemented with fidelity for at least 6 weeks and revised at least once during that time if plan is not effective for the student as part of the Re-evaluation process if this has not already taken place. If the student already has a FBA and BIP in place, the IEP team must update these documents to incorporate strategies and positive supports to address the student's current problem behaviors.
2. The student's Behavior Intervention Plan that addresses the current problem behaviors should have been in place for at least 6 weeks, implemented with fidelity and revised at least once during that time if plan is not effective

3. An IEP meeting must be held to review student's behavior and academic levels to determine the student's most appropriate placement; a representative from Barnwell 45 Alternative Program should attend the IEP meeting. In addition, the school psychologist from the student's school must be in attendance.
4. If the IEP team decides to change the student's placement to Barnwell 45 Alternative Program, the following must take place:
 - the student's IEP should be revised to reflect the alternative school setting
 - the student's BIP should be revised to support the student in the alternative school setting
 - The IEP team must develop a transition plan to help ensure a successful transition back to a regular school placement. This transition plan should include:
 - a. an IEP meeting with the home/receiving school's special education teacher and school psychologist and Barnwell 45 Alternative Program teacher and school psychologist in attendance
 - b. discussion of the student's behavior at the alternative school and strategies/supports that were both successful and ineffective
 - c. re-integration steps such as returning to the home school on a partial day schedule or other transition steps to re-connect the student with the home school
 - an intake meeting is scheduled with the Director of Barnwell 45 Alternative Program to review the alternative school information with the parent
 - parent is provided all copies of the IEP amendments and Prior Written Notice before the change in placement can occur
 - all Barnwell 45 Alternative Program staff who will be working with the student will be provided with a copy of the BIP and IEP accommodations

Placement Out of Barnwell 45 Alternative Program

When the student's behavior has improved to the degree that placement back into a regular school setting is recommended, the following must take place:

- an IEP meeting is held to discuss the student's return to the home/receiving school, in addition to staff, attendees must include the receiving special education teacher and school psychologist; an administrator from the receiving school is invited as well as the special needs transportation specialist if transportation is a component of the transition plan
- based on discussion of the student's behavior at the alternative school, strategies/supports that were both successful and ineffective, and the requirements for success in the new setting, the student's BIP is revised to support the student in the home/receiving school setting
- the action steps needed to implement the transition plan are prepared, such as scheduling the student's return to the home school on a partial day schedule or other transition steps to re-connect the student with the home school
- the student's IEP is revised to reflect the home/receiving school setting
- parent is provided all copies of the IEP amendments and Prior Written Notice before the change in placement can occur

- all home/receiving school staff who will be working with the student should be provided with a copy of the BIP and IEP accommodations

Re-Evaluation

A re-evaluation is required of each child with a disability under the following circumstances:

- At least every three years* (Triennial)
- If conditions warrant a re-evaluation (e.g., to conduct a FBA, consider evaluation for additional services or a different disability category)
- At request of parent, teacher, or physician
- Before determining that a child no longer has a disability or the need for services (discontinuing services)
- Before a child identified as Developmentally Delayed reaches 10 years of age to determine if the child continues to be a child with a disability as defined by any of the other categories of disability

Regardless of the purpose of the re-evaluation meeting, teams should consider conducting the triennial re-evaluation as well if it has been more than a year since the last re-evaluation. This would consolidate re-evaluation meetings and satisfy re-evaluation requirements for three years. ***A re-evaluation cannot occur more than once a year unless the parent and district agree otherwise or unless the student may no longer need a service.**

A re-evaluation is **not** required under the following circumstances:

- Before termination of the student's eligibility when the student is graduating with a regular high school diploma (PWN will be provided, however)
- Before termination of the student's eligibility at the end of the school year in which he/she reaches the age of 21
- When the district and parent agree that a re-evaluation is not needed

The district must obtain parent consent and provide prior written notice for the re-evaluation if additional data are needed. Reasonable attempts must be made to obtain consent from the parents to conduct the re-evaluation. This should include documentation of at least two contacts by two different methods (phone calls, letters, e-mails, home or work visits, etc.). If the district can demonstrate that reasonable attempts have been made and the **parents have failed to respond**, after contacting the Director of Special Services for consultation, parental consent need not be obtained for the re-evaluation.

If the parent refuses consent for the re-evaluation, the district may do one of the following:

- Agree with the parent that the re-evaluation is not necessary
- Pursue the re-evaluation by using consent override procedures including mediation and due process (this is optional for the district).
- Discontinue special education and related services if the district determines, through a review of existing data, that the child no longer has a disability or does not continue to need special education and related services.

If the team determines that no additional data are needed, the district must notify the parents, explaining the reason for this determination and informing them of their right to request an evaluation. When reviewing existing data, the team must take into account the student's progress since initial placement; initial eligibility criteria need no longer be met for a re-evaluation.

If the team determines that a student is no longer eligible for special education services but continues to need general accommodations, he/she will be referred for consideration of eligibility for a 504 plan. Once a student is dismissed from special education, a subsequent referral for special education services would be considered an initial evaluation.

Triennial Re-evaluations

The reevaluation process is required every 3 years, or more often if needed, to determine:

- If the child continues to be a child with a disability
- The educational needs of the child
- The child's present levels of academic achievement and functional performance
- Whether the child continues to need special education and related services
- 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 and to participate, as appropriate, in the general education curriculum.

School psychologists and speech therapists review information generated from the Enrich IEP program prior to the first day of school each year to generate the list of students whose triennial re-evaluations are due for that year and share this list with the respective special education teachers and clerical assistants. Students who transfer to Barnwell School District 45 during the year are added to this list as applicable. A Special Services designee uses this information to schedule re-evaluation meetings and to ensure that both school psychologists and speech therapists consolidate their respective triennial re-evaluation meetings for each child into one meeting that meets the earliest triennial deadline. Triennial reevaluations are scheduled to coincide with the student's annual review if at all possible. **The reevaluation process must be completed and the meeting held by the reevaluation "due date".**

Re-evaluations for additional services (e.g., ABA, OT, PT, AT, vision, hearing, etc.) and for conducting Functional Behavioral Assessments (FBA)

1. Prior to the comprehensive re-evaluation meeting, the teacher or parent (or physician via a prescription, letter, etc.) makes the team aware of concern; teacher completes a Student Assistance Team (SAT) referral form or Referral for Speech-Language Evaluation; this is forwarded to the designated person responsible for handling the referral.
2. If no screening will take place, the re-evaluation meeting is scheduled. Referrals for a Functional Behavioral Assessment will not include a screening.
3. If the student is to be screened, this must be done **PRIOR** to the re-evaluation meeting, not afterward. The parent should be contacted by phone initially to be made aware of the need for screening and then must also be provided a written notification. The purpose of the screening is to provide the team with additional information to assist in determining areas in need of additional data, not to pre-determine whether additional evaluation will take place. Screenings must take place within 15 school days of the provider's receipt of the referral, and the results must be sent to the case manager prior to the re-evaluation meeting. The screening results are discussed at the re-evaluation meeting as part of the comprehensive review of data and documented.

4. For students with vision and hearing impairments, a release of information form should be signed by the parent prior to the re-evaluation meeting in order for the district to request the vision/hearing evaluation report- the request for report(s) must be done in an expeditious manner. Once the evaluation report is received, it is forwarded to the vision or hearing teacher via the school psychologist; after reviewing the vision or hearing report, the vision or hearing teacher must submit her recommendation to the case manager (prior to the re- evaluation meeting).
5. At the re-evaluation meeting, the team completes the Re-evaluation Review form to determine if additional data is needed; If so, parent is provided with PWN documents for permission to evaluate; permission is obtained at the meeting or soon thereafter. For OT or PT evaluations, the Doctor's Referral for School-based Therapy form is signed by the parent and then faxed by the school to the physician. When the referral form is received by the district, the OT or PT is notified immediately so that the evaluation can be scheduled in a timely manner.
6. Student is evaluated in a timely manner, and the comprehensive evaluation results are documented on the Eligibility Determination form. All staff that conduct the evaluation must attend the review of additional data meeting. The review of additional data meeting is held to review results and determine if additional services are appropriate. Team completes the Eligibility Determination form. If additional services are appropriate, the IEP is amended to reflect the additional services. The parent is provided with a copy of the re-evaluation documents and amended IEP.
7. After the meeting but before the change(s) in services are implemented, the parent is provided with PWN of the information reviewed at the meeting.

Parent Request for Re-evaluation

If parents request a re-evaluation of their child, this request is documented and a re-evaluation meeting is scheduled at a time convenient for the parent. The IEP team meets to determine the parent's concerns related to the request for re-evaluation, and the team proceeds with the comprehensive re-evaluation process.

Re-evaluations to Determine Continued Eligibility and/or Need for Services

When conducting a comprehensive re-evaluation meeting to determine continued eligibility/need for services, all service providers who may be discontinuing services must attend the meeting. A psychologist is required to attend meetings for discontinuation of eligibility except for speech or related/additional services.

With the exception of students who receive speech as their primary service, a school psychologist or Special Services designee must attend and assist with the Triennial Re-evaluation review. Psychologists must also attend re-evaluation meetings for the purpose of conducting Functional Behavioral Assessments.

Reevaluation of Students Identified as Developmentally Delayed

1. If a child ages 3 through 9 was determined eligible as a child with DD, a reevaluation must be conducted before the child turns age 10 to determine whether the child continues to be a child with a disability as defined by any of the categorical areas under the law and whether the child continues to need special education and related services.
2. The reevaluation to determine continued eligibility as a child with a disability may take place anytime prior to the child's 10th birthday.

Discipline of Students with Disabilities

Students with disabilities, identified under the Individuals with Disabilities Education Act (IDEA), have rights and protections under the law with regard to discipline procedures.

Positive behavior interventions and supports will be used to promote and reinforce appropriate behavior. When a student with a disability begins to demonstrate chronic or severe problems with behavior in the school setting despite these preventative supports and strategies, the IEP team will meet to seek parental permission to conduct a Functional Behavioral Assessment (FBA) for the purpose of developing a Behavior Intervention Plan (BIP). Students with disabilities are expected to follow the District's Code of Conduct except as specified in the student's Individualized Education Program (IEP).

In-school Suspension

A day of in-school suspension (ISS) will not count as a day of suspension from services or as a change of placement if, during the ISS, the student 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 students to the extent that he/she would have in the current placement.

Students with disabilities in ISS will continue to receive instruction from a special educator and will have access to instructional materials/assignments from their general curriculum classes. Special education teachers will document services provided to their students in ISS.

Bus Suspensions

A bus suspension counts as a day of Out-of-School Suspension (OSS) if special transportation is a related service on the student's IEP. If special transportation is not on the student's IEP and the student does not attend school as the result of the suspension, it does not count as a day of OSS.

Short-term Removals (Not a change in placement)

If a student with disabilities violates the District's Code of Conduct, he/she may be removed from his/her current educational placement for not more than 10 school days in a school year (to the extent that those removals are applied to students without disabilities). The school does not have to provide educational services during the first 10 days of removal in a school year. A removal from school for less than 50% of the school day is not counted as a day of suspension.

Out-of-School Suspensions/Removal for More Than 10 School Days in a School Year

School administrators cannot suspend a student with disabilities for more than 10 cumulative days in a school year without first holding a manifestation determination meeting.

Long-term Removals (Change of Placement)

The removal of a student with disabilities is a change of placement when:

- the removal is for more than 10 consecutive school days or
- the removal is one of a series of short-term removals that total more than 10 days and constitutes a pattern of removals

In certain circumstances, the school administrator, in consultation with the Director of Special Services, may suspend a student for more than 10 school days in a school year if the additional removals do not constitute a change of placement or a pattern of exclusion. A pattern of exclusion is determined by reviewing factors such as (1) the reason for each removal and whether the student's behavior is similar in each incident, (2) the length of each removal, (3) the proximity of the removals to one another, and (4) the total amount of time the student is removed.

If school and district personnel determine that the additional removal will not constitute a change of placement, the student may be removed beyond the initial 10 days, depending upon the outcome of a manifestation determination. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a particular student.

When the school administrator considers a long-term suspension/expulsion, the following steps must be followed.

1. On the day the decision is made to recommend long-term suspension/expulsion, the school must notify the parents of the decision and provide them with a copy of the Parent Handbook to Special Education.
2. On the 11th school day of removal, the school must begin providing special education and related services. This provision of service is documented for each day of suspension over 10 days.
3. The IEP team must meet to determine if the student's violation of the school's code of student conduct was a manifestation of his/her disability.

Manifestation Determination

A manifestation determination meeting will be held as soon as possible, but not later than 10 school days following the decision to change the student's placement due to a violation of the code of student conduct or when a "zero tolerance" offense (i.e., drug/weapon/serious bodily injury) has been committed. During the manifestation meeting, the IEP team members (including a school psychologist) must meet to review the following:

- relevant information in the student's file,
- the student's IEP including a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP),
- any teacher observations, and
- any relevant information provided by the parent.

Based on its review of all relevant information, the team must determine if the conduct in question:

(a) was caused by or had a direct and substantial relationship to the student's disability

OR

(b) was the direct result of the school's failure to implement the student's IEP.

If it is determined by the team that the conduct of the student was the result of either (a) or (b) above, then the conduct must be determined to be a manifestation of the student's disability.

If the IEP team determines that the student's behavior WAS a manifestation of the disability, the IEP team must:

- Return the student to the placement from which he/she was removed, unless the parent and school agree to a change in placement as part of the modifications of the BIP.
- Conduct a FBA or review/revise the current FBA and develop or review/revise the current BIP

If it is determined that the student's behavior is a manifestation of the disability, the student cannot be subject to a long-term removal for the behavior. The school can request a special education due process hearing officer to order placement in an Interim Alternative Educational Setting (IAES) for up to 45 school days if the district can show that continuing in the current placement is substantially likely to result in injury to the student or others.

If the IEP team determines that the student's behavior WAS NOT a manifestation of the disability, the LEA

- may proceed with suspension and expulsion proceedings if the disciplinary procedures applicable to students without disabilities are applied in the same manner and duration
- must continue to provide educational services during the period of long-term removal

The IEP team must convene and follow change of placement procedures, as well as determine appropriate services. These services must enable the student to (1) participate in the general curriculum, although in another setting, (2) progress toward meeting his/her IEP goals, and (3) receive services to address the behavior violation so that it does not recur.

Educational Services During Removals

The school is not required to provide educational services during the first 10 days of out-of-school suspension (OSS). However, if the total number of days of OSS reaches 11, educational services must be provided. The IEP team must determine the amount and type of services that will be provided to the student. Special education and related services (if included on the IEP) must be provided to enable the student to participate in the general education curriculum in another setting (if applicable), to progress toward mastery of his/her IEP goals, and to prevent the behavior from recurring. Services provided after the first 10 days of OSS do not have to replicate every aspect of the services that the student would receive in his/her normal classroom. However, the student must be allowed to progress toward meeting graduation requirements. Special transportation will be provided as necessary.

Drugs, Weapons, and Serious Bodily Injury

When a student with a disability commits a drug, weapon, or serious bodily injury offense, a hearing is immediately scheduled with the district hearing officer to determine the accuracy of the charge. Within 10 days, the IEP team holds a manifestation determination meeting. If the Hearing Officer finds the student guilty of committing the offense, he refers the student to the IEP team to determine placement. These offenses are defined as follows:

- carries a weapon to or possesses a weapon at school, on school premises, or to a school function under the jurisdiction of the school district;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district (tobacco and alcohol are not illegal drugs under this definition); or
- inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district. The injury must be so serious as to be life-threatening or result in extreme physical pain, obvious disfigurement, or loss of a body part or organ.

Discipline of Students Not Yet Eligible for Services

A student who has not been determined to be eligible for special education and related services and who has violated the Code of Conduct may assert the disciplinary protections of IDEA if the District has knowledge that the student had a disability before the behavior occurred. The District is considered to have knowledge if a teacher or other personnel has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the Special Services Director or other supervisory personnel, if the parent has expressed concern in writing that the student may have a disability, or if the parent has requested an evaluation. Students who were in special education at one time and were dismissed, who were evaluated and found to be ineligible, or whose parent did not give permission to evaluate or place are not protected by IDEA. Students who are in the process of being evaluated, however, are protected by IDEA. If a request is made for an evaluation when a disciplinary action has been imposed because the parent believes the student may have a disability, the evaluation shall be conducted in an expedited manner. The student will remain in the educational placement determined by school personnel until the results of the evaluation are known. If the student is eligible for special education and related services, a manifestation determination must be conducted.

Parent Appeal/Expedited Due Process Hearing

If the student's parents disagree with any decision regarding the disciplinary placement or the results of the manifestation determination, the parents may appeal the decision by requesting an **expedited** due process hearing. Additionally, if the school believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, the school may request an expedited due process hearing. The district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

A parental request for a due process hearing does not prevent the school district from seeking judicial relief such as a temporary restraining order or an injunction, when necessary.

Resolution Meeting During Expedited Due Process Hearing

A resolution meeting must occur within seven days of the school receiving notice of a parent's due process complaint, unless the parents and school agree in writing to waive the resolution meeting or agree to use the mediation process. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the school district's receipt of the due process complaint.

Placement During Expedited Due Process Hearing

When the parent or the school appeal a disciplinary placement or the result of the manifestation determination, the child remains in the interim alternative educational setting determined by the IEP team pending the decision of the hearing officer or until the expiration of the time of the disciplinary removal, whichever occurs first, unless the parent and the school agree otherwise.

The decisions from expedited due process hearings are appealable consistent with 34 C.F.R. § 300.514. When an appeal is made by either the parents or the district, the child must remain in the IAES pending the decision of the special education due process hearing officer or until the expiration of the time period (period of disciplinary removal if the behavior is not a manifestation of the disability or period due to removal for special circumstances – drugs, weapons, or serious bodily injury), whichever occurs first, unless the parent and district agree otherwise.

Services to Students with Disabilities Voluntarily Enrolled by Their Parents in Private/Home Schools

Definition of a Private School Student

A private school student is any student of legal school age whose parent(s) chooses a private school or home school setting in lieu of placement in a public school.

Eligible Student

Any student who meets the same eligibility criteria under IDEA as students enrolled in public schools and who attends a private or home school in Barnwell School District 45 will be entitled to participate. Child Find services will be available to any student aged 3-21 who is a legal resident of the District. Although preschool-age students attending private schools are included in Child Find, preschool students with disabilities attending private day care programs are not treated as private school students- these students are entitled to a FAPE and are served with an IEP.

Calculation of the Proportionate Share

The proportionate share represents the number of eligible private school students divided by the total of all eligible students. The calculations are based on the Child Count data. The resulting percentage is multiplied by the district's total sub-grant under IDEA for the *subsequent* fiscal year.

Calculation of Expenditures:

Services are calculated at the end of the fiscal year (June 30) based on the hourly salary (for that service) multiplied by the amount of service provided, or in the case of contracted services, the cost of the service provided (e.g., contracted educational re-evaluations). If all funds allocated for the provision of special education and related services to private school students are not expended during the school year, the funds will be carried over to provide services to students in private schools and home-schooled in the subsequent school year.

Input from Private/Home School Representatives

The Director of Special Services will develop a plan annually to serve eligible students with the proportionate share of federal funds. Prior to the design and development of special education and related services, Barnwell School District 45 will consult with the following:

- private school representatives
- representatives of parents of parentally-placed students with disabilities
- home school representatives (including parents with programs approved by the district and home school organizations)

Current District Plan for Services

Screening and assessment to determine the presence of a disability under IDEA is available to children ages 3 to 21 who attend a private school located within the jurisdiction of Barnwell School District 45. Other services, such as speech-language therapy, specially-designed instruction, on-site consultation, and training may be available, if appropriate.

Documentation of Services

If the parents make clear their intention to enroll their child at a private school (or continue that enrollment) and that they are not interested in a public program or placement for their child, the District will not develop an IEP. If services are provided, the services will be provided and documented through a Services Plan. If at any time the parents decide to withdraw their child from the private school and return to the District, a meeting will be scheduled to develop an IEP for the public school setting.

Provision of Services

Services will be provided during the regular working day of the employee. The District will determine location of services on a student-by-student basis in consultation with the private school and home-school representatives. Services will not be provided outside the geographic boundaries of Barnwell School District 45.

Transportation

If the services provided to a private school student do not take place at the student's private school, and district transportation is necessary for the student to participate in the services, the District will provide transportation within the District's boundaries.

Personnel

Services will be provided by school district employees holding the same credentials as required to provide services within the public school setting.

When Parents Decline Services

If the parent elects not to accept services, the eligible student's file will be maintained as inactive. All eligible students will be counted when determining the proportionate share available for private school services.

Discontinuing Special Education Services

The district's obligation to provide special education and related services ends:

- When an evaluation shows that the student is no longer eligible for services
- When the student meets graduation requirements and receives a regular high school diploma
- When the student turns 21 years of age (on or before September 1st)

No longer eligible for services

1. When a parent or school personnel suspect that a child is no longer eligible for special education and related services, a reevaluation must be conducted prior to the child's dismissal from the program to determine if the child is no longer a child with a disability. As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments.
2. If it is determined by the IEP team through a reevaluation that the child is no longer a child with a disability, the district may recommend dismissal from special education.

Graduation

1. All students receiving special education services will receive a regular high school diploma at the completion of their secondary program if they meet graduation requirements of the state. A regular high school diploma does not include an alternative diploma that is not fully aligned with the state's academic standards, such as a certificate of attendance, an occupational diploma/certificate, or General Educational Development (GED) (Federal Register, August 14, 2006, p. 46580). If a modified or differentiated diploma or certificate is used for students receiving special education services, however, such diplomas or certificates do not end eligibility for special education services.
2. When the student enters high school, progress toward graduation must be monitored annually and recorded on an official transcript of credits. Some students may require services to age 21 to meet IEP goals. The district's obligation to provide special education services ends (a) when the student meets graduation requirements and receives a regular high school diploma, (b) at the end of the school year in which the child reaches age 21, or (c) when an evaluation shows that the child is no longer eligible for special education services.
3. Students with disabilities must be afforded the same opportunity to participate in graduation ceremonies as students without disabilities even if the IEP team determines that services will continue after the student has met all of the required credits (but an official diploma has not been awarded). A student may require services to age 21 to meet IEP goals or because he or

she has not obtained all of the required credits for graduation. In either case, however, the student may be allowed to participate in graduation ceremonies with his or her classmates.

4. No reevaluation is required prior to exiting a student due to graduation with a standard high school diploma. However, before the student completes the last semester of high school in which she/he is expected to graduate, the district must provide the student (if over age 18) and the parents with PWN of the discontinuation of services at the end of the school year. The PWN will clearly state that the student will no longer be entitled to receive special education services from the district after graduation.

Services to Age 21

1. Barnwell School District 45 ensures that all students with disabilities between the ages of 3 and 21, inclusive, have available to them a free, appropriate public education that emphasizes special education and related services designed to meet their unique needs. Students who turn 21 after September 1 of the school year and have not received a high school diploma will be permitted to enroll and complete the school year in an appropriate program as determined by their IEP team. The school must provide the student and the parents with PWN and Summary of Performance at the end of the school year in which the student turns 21. A reevaluation is not required when a student ages out of eligibility for services upon turning age 21.
2. Even when the student or parent states that he or she does not intend to return to school for the next school year, the IEP team must provide the student with notice that he or she is eligible to continue receiving services to age 21 and develop an IEP for the student.

Summary of Performance

1. A Summary of Performance (SOP) is required under the reauthorization of the IDEA for a student whose eligibility for special education services terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The district must provide the student with a summary of his/her academic achievement and functional performance which must include recommendations on how to assist the student in meeting his/her postsecondary goals. The purpose of the SOP is to transfer critical information that leads to the student's successful participation in postsecondary settings. It includes a summary of the achievements of the student with current academic, personal, and career/vocational levels of performance. Information may be included as part of the summary based on assessment findings and team input. Assessment data and accommodations included in the summary should be written in functional terms easily understood by the student. Any supporting documents are to be appropriately referenced and included with the summary. Signatures by the student and IEP team members are encouraged as verification that the contents of the summary have been explained.

2. The SOP must, at a minimum, address the following:
 - a. Academic achievement: information on reading, math, and language grade levels, standardized scores, or strengths.
 - b. Functional performance: Information on learning styles, social skills, independent living skills, self-determination, and career/vocational skills.
 - c. Recommendations: team suggestions for accommodations, assistive services, compensatory strategies for postsecondary education, employment, independent living, and community participation.
3. The SOP is intended to assist the student in transitioning from high school to higher education, training and/or employment. This information is helpful under Section 504 and the Americans with Disabilities Act (ADA) in establishing a student's eligibility for reasonable accommodations and supports in postsecondary settings. It is also useful for the Vocational Rehabilitation Comprehensive Assessment process. However, recommendations in a student's SOP do not assure that an individual who qualified for special education in high school will automatically qualify for accommodations in a postsecondary education or employment setting.
4. Since the SOP must be provided to the student with a disability whose eligibility terminates due to graduation or age, it is reasonable to conclude that the SOP must be completed and provided to the student by the end of the final year of a student's high school education. That does not mean that it cannot be completed and provided to the student prior to graduation. The timing of completion of the SOP may vary depending on the student's postsecondary goals. If a student is transitioning to higher education, the SOP may be necessary as the student applies to a college or university. Likewise, this information may be necessary as a student applies for services from state agencies such as vocational rehabilitation. In some instances, it may be most appropriate to wait until the spring of a student's final year to provide an agency or employer the most updated information on the performance of the student.

Student Drops Out of School

1. Under S.C. Code Ann. § 59-65-30 (2004), students are allowed to drop out of school at age 17 and may at some point obtain a General Equivalency Diploma (GED). If a student with a disability drops out of school, documentation to that effect must be placed in the student's confidential file. The district must inform the parents that special education services continue to be available to the student through age 21. If the student reenrolls, the previous IEP must be implemented until a new IEP is developed. The new IEP should be developed as soon as possible after the student reenrolls.
2. If a student drops out of school, the district is obligated to consider the student's FAPE entitlement very carefully. The district has an obligation to report the student's truancy to the proper authorities if the student is younger than age 17.

3. If a student drops out of school, no PWN, consent, or reevaluation is required. However, reevaluation may be needed if the student was to reenroll and a new IEP may need to be developed.

Guidelines/Procedures for Students With Disabilities Attending Adult Education Programs

School districts are responsible for provision of special education and related services to students with disabilities who attend an adult education program (AEP). To accomplish this requirement, the following procedures will be implemented.

Consideration of Adult Education Services by the IEP Team

1. If adult education services are being considered for a student with disabilities within the district, a Special Review IEP meeting must be held to include a representative from the AEP.
2. Prior to the IEP meeting, the student will take a basic skills assessment in the areas of reading, math, and language in order to assist the IEP team in determining if the AEP is likely to be a good fit for the student and for purposes of program placement if the AEP is recommended.
3. Based on a review of the student's academic information, including transcripts, (credits earned, courses needed for graduation), grades, classroom performance, and present levels of academic achievement and functional performance on the IEP, the IEP team determines whether the AEP is likely to assist the student in accomplishing the goals and objectives specified in the student's IEP as well as the likelihood of the student being successful in the AEP curriculum.
4. If the IEP team determines that the AEP placement is not an appropriate placement for the student, the team reviews and revises the student's current IEP as necessary and recommends that the student remain in the current placement or other appropriate placement with provision of special education and related services specified in the IEP. If the student (ages 18 to 21) or the parent of students age 17 or younger disagrees with the team's recommended placement and proposed IEP, the student or parent may request a due process hearing to assert the appropriateness of the AEP placement. The student may decide to enroll in the AEP without special education and related services if the student is otherwise qualified to enroll in the AEP. The district has no obligation to provide services in a placement deemed by the IEP team to be inappropriate for the student.
5. If the team determines that the AEP is the most appropriate placement for the student, the IEP is amended to reflect the services to be provided in the AEP setting. Prior Written Notice must be provided to the parent or adult student prior to the change in placement.

Student Residents of Other Districts Enrolling in Barnwell School District 45's Adult Education Program

1. All students enrolling in Barnwell School District 45's Adult Education Program who are 21 (on or before September 1st) or younger must complete an Adult Education registration form, transcript request, and authorization of release form. If the enrollment information indicates that the student has a disability, the AEP staff asks the student for any IEP information he/she may have and contacts the student's previous district immediately to request records and verify the last special education placement.

2. The student will take a basic skills assessment in the areas of math, reading, and language. The results of this test and his/her previous progress at high school will determine how they will be placed in the program.
3. When the student's records have been received/last special education placement verified, the Director of Adult Education will convene an IEP team consisting of the adult student, parent (if applicable), AE special education teacher, a regular education teacher, and the Director of the AEP who will also serve as the LEA representative.
4. If the previous IEP is current, the team will revise the IEP to reflect the services to be provided in the adult education setting.
5. If the IEP is out of date, data regarding present levels of academic achievement and functional performance will be gathered in order to establish current findings and goals for the IEP. If the student's eligibility and/or need for special education services is in question, the team will conduct a comprehensive re-evaluation meeting to review data and to gather additional data if needed. All Barnwell School District 45 re-evaluation procedures will be followed.
6. If the team determines that the student no longer qualifies for and/or needs special education and related services after reviewing existing student data or after collection of additional data, the team may recommend dismissal from special education services. The student may then enroll in the AEP as a non-disabled student. The team may develop an accommodations plan under Section 504 to provide accommodations if needed.
7. Prior Written Notice must be provided to the parent or adult student prior to implementation or discontinuation of services

Confidentiality

Confidentiality of educational records is a basic right shared by all students in the district and their parents. Confidentiality regulations apply to all districts and private schools that accept federal funds. In addition, all school personnel (including contracted employees) are governed by confidentiality requirements of the IDEA, which apply to students with disabilities. All people involved in special education should be aware of the laws and regulations ensuring that all records and information will be kept secure and remain confidential.

1. Each school shall annually notify parents of their rights under Family Educational Rights and Privacy Act (FERPA). The notice must inform parents or adult students that they have the right to:
 - a. Inspect and review the student's education records;
 - b. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
 - c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that § 99.31 of FERPA authorize disclosure without consent; and
 - d. File a complaint under §§ 99.63 and 99.64 concerning alleged failures by the district to comply with the requirements of FERPA.
 - e. The procedure for exercising the right to inspect and review education records.
 - f. The procedure for requesting amendment of records.
2. The district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The district shall effectively notify parents who have a primary or home language other than English. This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place.
3. Definitions of terms used are as follows:
 - a. **Personally identifiable** includes information such as the name of the child, child's parents, or other family member; address; personal identifier such as the child's social security number or student number; or list of personal characteristics or other information that would make it possible to identify the child.
 - b. **Destruction** means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so no one can be identified.
 - c. **Educational records** means any document or medium on which information directly related to one or more students is maintained by a participating agency.

Access Rights

1. FERPA and Federal and State special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.
2. Educational records include, but are not limited to:
 - a. academic work completed and level of achievement
 - b. attendance data
 - c. scores and test protocols of standardized intelligence, aptitude, and psychological tests
 - d. interest inventory results
 - e. health data
 - f. family background information
 - g. information from teachers or counselors
 - h. observations and verified reports of serious or recurrent behavior patterns
 - i. IEPs
 - j. documentation of notice and consent
3. Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 C.F.R. 99.3, states that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."
4. The district must prevent the disclosure to any unauthorized person of personally identifiable information pertaining to all students. Disclosure is the release, transfer, or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.
5. FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations. For example, FERPA allows the school to release records to authorized individuals, such as:
 - a. other school officials, including teachers at the school where the student attends, who have a legitimate educational interest;
 - b. officials of another school, school district, or postsecondary educational institution where the student is enrolled or seeks or intends to enroll if the district makes a reasonable attempt to notify the parents or the student of the disclosure at the last known address, however no notice is required if the disclosure is initiated by the parent or adult student;

- c. authorized representatives of the US Comptroller General, US Secretary of Education, and State Educational Agencies in connection with an audit or evaluation of Federal or State supported programs, or for the enforcement or compliance with Federal legal requirements related to those programs;
 - d. disclosure in connection with financial aid for which the student has applied or received to determine eligibility, amount, or conditions of the aid or to enforce the terms and condition;
 - e. disclosure to accrediting organizations to carry out their functions;
 - f. disclosure to a parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code;
 - g. disclosure of relevant educational records to a court in a legal action initiated by the district against a parent. Also, disclosure to comply with a judicial order or subpoena. However, these disclosures may be made only if the district makes a reasonable effort to notify the parents or eligible student of the order or subpoena in advance of compliance with the order or subpoena, unless the order or subpoena states that the existence or contents of the order or subpoena not be disclosed;
 - h. disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals;
 - i. disclosure of directory information. This is information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended; and
 - j. disclosure to the adult student or student of any age if attending a postsecondary school, or to the parents of a student who has not reached 18 years of age and is not attending an institution of postsecondary education.
6. Any district employee who receives a request from a parent to inspect and review educational records relative to his or her child should notify the Director of Special Services or his/her designee within five (5) calendar days.
 7. The Director of Special Services or his/her designee is responsible for establishing a mutually agreed upon date and time for the parents to review the records. However, this shall not be more than thirty (30) calendar days from the receipt of the request. Should the information be needed

Immediately for an IEP meeting or due process hearing, the Administrator will be responsible for meeting the required timelines of the meeting or hearing.

8. The Administrator is also responsible for having appropriate individuals present at the meeting to explain or interpret the records.
9. The parents must inform the Administrator in writing if they have given permission for a representative to inspect and review the records of their child.
10. The Director of Special Services or his/her designee provides the parents a copy of any record requested within ten (10) calendar days of the request. There is no charge during a school year for up to twenty-five (25) pages per student. After this number, a fee of ten (10) cents per page may be charged. Should the parent indicate that this charge presents a financial hardship, the parent must provide the Director of Special Services or his/her designee with information regarding annual income to determine if the parents meet the poverty guidelines as established by the district's Free Lunch and Reduced Price Scale. The district does not charge a fee to search for or to retrieve information.
11. The Director of Special Services or his/her designee is responsible for determining if the parent has the authority to inspect and review records relating to his or her child. The parent is allowed to access information unless the district has been notified by written court documents that the parent does not have the authority to do so.
12. The Director of Special Services or his/her designee is responsible for designating a person to explain the parental rights orally under Confidentiality to the parent at the initial contact or no later than prior to evaluation.
13. Principals annually provide written notice of privacy rights to parents. The parent of the student has the right to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information. Notification from the parent or eligible student must be made in writing within 15 days of registering his or her child and must state what information should not be classified as directory information.
14. When the district responds to a federal grand jury or other subpoena issued for law enforcement purposes, there is no obligation to notify the parents if the court or agency issuing the subpoena orders the district not to disclose the existence or contents of the subpoena or the records disclosed pursuant to the subpoena. In response to any other subpoena or court order, the parents and the student must be notified prior to the release of the information, or there must be parental consent or consent of the student, if age 18 or older.
 - a. When a test protocol contains personally identifiable information directly related to an individual student, that protocol is an education record and the parent has the right to inspect and review it. In most cases, however, the parent does not have the right to a copyrighted test protocol. Exceptions to

this provision may apply during pretrial discovery, subpoenas, and the right to question witnesses about their records or if ordered by a special education due process hearing officer or a judge.

- b. When transferring records, discipline records should be included as part of a student's education records.

Record of Access

1. The Director of Special Services or his/her designee maintains documentation of parties obtaining access to individual files located at the district office.
2. The Special Services secretary provides, within ten (10) calendar days to parents, upon specific request:
 - a. A list of names of persons to whom personally identifiable data has been released,
 - b. An explanation of the specific type of data released,
 - c. The purpose for which it was released, and
 - d. The date of release.

Records on More Than One Child

In order to determine if any educational record includes information on more than one student, the Director of Special Services or designee shall review the information prior to meeting with the parents and disclose only that portion which relates to their child.

List of Types and Locations of Information

The Director of Special Services or his/her designee is responsible for providing parents, upon specific request, a list of types of data collected and the specific location of the data. Upon written or verbal request from a parent, the Director of Special Services shall provide this information in writing within ten (10) calendar days.

Amendment of Records at Parent's Request

1. After the Director of Special Services or his/her designee has reviewed educational records with parents and provided any necessary interpretations, parents may challenge the accuracy or appropriateness of data which the parents believe to be inaccurate, misleading, or in violation of student's rights of privacy. Under these conditions the parent may request the district to amend the information.
2. Parents must make their request for amendments in writing to the Director of Special Services or his/her designee.

3. The Director of Special Services or his/her designee notifies parents within fifteen (15) calendar days of the disposition of the formal request to amend:
 - a. When the parents' request is accepted, the appropriate amendments shall be made and the parents shall be informed in writing.
 - b. When the request is denied, parents shall be informed in writing of this refusal and their right to request a hearing before the District's Hearing Officer, not a special education due process hearing officer.

Opportunity for a Hearing

1. Parents shall submit a written request for a hearing to the Director of Special Services or his/her designee.
2. When the decision of the hearing officer is that the data is inaccurate or misleading or violates the privacy or other rights of the child, the appropriate amendments are made and the Director of Special Services or his/her designee informs the parent in writing. The decision of the hearing officer is binding.
3. When the decision of the hearing officer is that the data is accurate, the Director of Special Services or his/her designee shall inform the parents of their right to provide the agency with a written statement commenting on the data or setting forth any reasons for disagreeing with the data. The statement is attached to the data and remains as long as the contested portion of the data is maintained. The decision of the hearing officer shall be binding.
4. Disclosure of the contested portion of the data to authorized persons, subsequently, shall include a copy of the parents' statement.

Consent

1. The district transmits personally identifiable data when the student transfers from one school system to another, subject to the following requirements:
 - a. When a student transfers during the year from one school in the district to another school within the district, the student's folder is sent by the Principal's Designee to the receiving school without parental permission within ten (10) calendar days. The sending school is not required to notify the parents about the transfer of records.
 - b. Upon receipt of a request for records from another school outside the district, the special services secretary sends the requested information within ten (10) calendar days of the receipt of the request. The Special Services administrative assistant documents the transfer of records in the student's file.
 - c. All requests to release or obtain information on students should be provided through the Special Services Department. If the Confidential

Records Release is signed by the parent at the school level, then this signed form must be sent to the Special Services Administrative Assistant or his/her designee for final processing.

- d. Special education records may not be withheld from another district or the parent because of fines owed by a student.

Safeguards

1. The Director of Special Services or his/her designee is the responsible person for ensuring confidentiality compliance for all students enrolled in the district's programs for students with disabilities.
2. Training of special education staff is conducted annually regarding confidentiality implementation. This training must be completed by October 1st of each year and appropriate documentation maintained.
3. The Director of Special Services or his/her designee maintains for public inspection a list of names and positions of those employees having access to personally identifiable data.

Destruction of Records

Barnwell School District 45 will maintain special education records for each student with a disability until no longer needed to provide educational services to the student. All special education records will be destroyed seven (7) years following program completion or graduation from school, unless the student or the student's legal guardian has taken possession of the records prior to that time.

Records will also be destroyed at the written request of the parent, with the exception of the following:

- Student's name, address, and phone number
- Grades, attendance record, classes attended, level and year completed

The Destruction of Records notice is included in the front of the District's Procedural Safeguard.

The Director of Special Services or his/her designee shall inform parents by letter when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student and apprise them of their right to have this information destroyed. The School District maintains a seven (7) year waiting period after the student has last attended a school in the District or graduated from high school before it considers personally identifiable information as no longer needed to provide educational services to the student.

Forty-five (45) days prior to destruction of any personally identifiable information, the Director of Special Services or his/her designee shall notify parents by letter in regular mail at their last known address that they have the right to request, and be provided, a copy of any data. Should the parents not respond to the first notification, a second letter will be sent by certified mail within thirty (30) calendar days. If the district does not receive a

response from the second letter within thirty (30) calendar days, the personally identifiable information will be destroyed.

Student's Rights

1. Upon a student reaching the age of majority, the special education teacher will explain to the student orally their rights under Confidentiality at the first IEP/staffing meeting after the student reaches the age of majority.
2. In those instances of a severely or profoundly disabled child who is legally determined to be incompetent to make such decisions for himself or herself, and for whom legal guardianship is required beyond the age of majority, the legal guardian shall maintain the rights to privacy. Decisions about competency of the individual student will be made only by the court in official action and documentation.
3. It shall not be the prerogative of a student 18 years old or older to deny his or her parent access to the student records if such student is dependent on the parent as defined in Section 152 of the Internal Revenue Code of 1954 (one-half or more of his or her financial support furnished by the parent).

Dispute Resolution

Informal Approaches to Dispute Resolution:

1. One of the first options for dispute resolution should be a review of the child's IEP. The parents and district may be able to resolve issues about a child's program by conducting a review of the IEP and amending it, as appropriate.. It is in the best interest of the child and the parent-district relationship for the IEP team to work together in a communicative, respectful, and honest manner.
2. IEP Facilitation: A facilitated IEP meeting includes an impartial facilitator who is not a member of the IEP team, but rather has been trained to help keep the IEP team focused on developing the child's program while addressing conflicts. The facilitator's job is to promote open, respectful communication and listening among IEP team members and to help work toward resolving differences of opinion. The facilitator does not impose a decision on the team, but rather helps to clarify points of agreement and disagreement. Most importantly, the facilitator ensures that the meeting remains focused on the child.

Mediation

1. Mediation is one of three formal methods of resolving disputes in special education concerning identification, evaluation, placement, and provision of FAPE at the local level. Other methods are state complaint and due process hearing. To begin the process of mediation, both parties must agree to mediate. Either the parents or the district may suggest this option initially by asking the other party if they are willing to mediate the disputed issues. The cost of mediation is borne by the state. There are no costs to either the parents or the district.
2. Mediation can have the following benefits over a complaint or due process hearing:
 - a. Mediation uses the strengths of both participants to solve problems.
 - b. Because it is voluntary and because a mediator has no authority to order any particular resolution, mediation is a safe way for both parties to offer and consider alternatives.
 - c. Mediation can be:
 - less antagonistic.
 - less time consuming.
 - less costly for both parties.
 - d. If an agreement is reached, it is written and accepted by the parties rather than ordered by a hearing officer or the SDE.
 - e. A negotiated agreement may help with future positive relationships.

Mediation Process

Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.

- a. The SDE is responsible for the costs of mediation. This cost is handled by the state paying directly for the training of all mediators and by the flow through of the IDEA funds that may be used by the district for all aspects of the mediation process, including the costs of meetings to encourage mediation.
- b. Mediation must be provided in a timely manner and at a location that is convenient for both parties in the dispute.
- c. Agreements reached during mediation must be in writing and must include the resolution of each issue for which agreement was reached. Every mediation agreement must also include a statement that:
 - (1) Discussions during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;
 - (2) Each party understands that the agreement is legally binding upon them; and
 - (3) The agreement may be enforced in a state or federal court of competent jurisdiction.
- d. The goal of the parties in mediation is to reach an agreement that is workable for all. If an agreement is reached, it is put in writing by the mediator and signed by both parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated.

Mediation Requests

- a. When parents or district personnel disagree about a special education issue, either party may request mediation. However, both parties must agree to use this process. Therefore, the first step in initiating special education mediation is to ask the other party if it is willing to mediate the disputed issue. Mediation may be requested by either the Director of Special Services or a parent. Mediation may be requested even after a due process hearing request has been filed. This is one reason that the timeline for mediation is short. Mediation must be completed within the due process timeline, and mediation may not be used to delay the parents' right to due process. However, the due process hearing timeline may be extended by the due process hearing officer for a specific period of time during the mediation process if requested by the parties.
- b. Once both parties agree in writing to mediation, the mediation session should typically occur within fourteen (14) calendar days. The district selects a mediator on a random or rotational basis. If the mediator is not selected on a random or rotational basis, both parties must be involved in and agree to the selection of the mediator. If the district and parents do not agree on the assignment of the mediator, the Director of Special Services or parents should contact the Office of

General Counsel at the SDE so that a mediator can be appointed by the SDE from the approved list. The SDE maintains a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

- c. The Director of Special Services provides parents with information concerning the mediation process and information identifying the mediator. The mediator provides parents with his or her contact information and notifies both parties as to the date, time, location, and purpose for mediation. The location must be convenient to the parties and should be acceptable to everyone. A neutral location is preferred. In some cases where neutral sites are not readily available, mediations can be held on district property. The mediator also answers any questions about the process and may request additional information from the parties.

Mediation Participants

- a. Mediation is an informal process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and a district representative.
- b. Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the district representative may ask an outside advocate to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a disability themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate assist them.
- c. The mediator makes the final decision as to who attends the mediation session.

Special Education Mediators

- a. In order to be considered trained and qualified, mediators must fulfill the following requirements:
 - (1) Be knowledgeable in laws and regulations relating to the provision of special education and related services;
 - (2) May not be an employee of the SDE, any state agency that provides a FAPE for children with disabilities, or the district that is involved in the education or care of the child; and
 - (3) Must not have a personal or professional interest that conflicts with the person's objectivity.

Mediation Results

- a. During mediation, the mediator will work with both parties to reach an agreement. If mediation discussions result in both parties reaching agreement, the mediator records the results in a written mediation agreement, which is signed by both parties. When the issues in

mediation involve IEP decisions, the mediation agreement may become part of the student's IEP if agreed to by the parties. The actions agreed upon in the mediation should be implemented immediately, unless the mediation agreement specifies otherwise.

- b. If the IEP is changed by adding the mediation agreement, the IEP team may write a new IEP or amend the existing IEP to reflect the mediation agreement. The district is responsible for following up with the required notice and consent forms. The revised IEP is then implemented. If the mediation agreement is not part of the IEP, the district must ensure that any person responsible for implementing the agreement is informed of their responsibilities. If the mediation is not successful, the mediator may declare that the mediation is at impasse and suggest that both parties consider other methods for dispute resolution, such as filing a complaint or requesting a due process hearing.
- c. The district must maintain copies of any forms or other formal written documentation generated by the mediation process. The Director of Special Services must send a copy of the mediation request form and the written agreement reached by the parties to the Office of General Counsel.

State Complaint

The complaint process is one of the methods parents or others have to resolve special education disagreements with the district. The complaint process is one of the parental rights (procedural safeguards, see Chapter 1) afforded under federal and state regulations. The SDE is mandated to make available an opportunity for individuals or organizations to file formal complaints against the district.

Filing a Complaint

- (1) Any individual or organization may file a complaint if they believe that the district is not complying with federal or state laws or regulations relating to special education. The complaint must allege a violation that has occurred not more than one year prior to the date the complaint is received by the SDE.
- (2). The complaint must be in writing and signed by the person or representative of the organization making the complaint. The complaint must include a statement that the district is not complying with the requirements of the IDEA and/or the SBE special education regulation, 43-243, and it must give the facts upon which that statement is based. The signature and contact information for the complainant and if alleging violations with respect to a specific child:
 - (a) the child's name and address of residence, or other contact information if the child is a homeless child or youth;

- (b) contact information for the person filing the complaint;
 - (c) the name of the school the child is attending;
 - (d) a description of the nature of the problem involving the child, including facts related to the problem; and
 - (e) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.
- (3) The party filing the complaint must forward a copy of the complaint to the district against which the allegations are made at the same time the complaint is filed with the Office of General Counsel. The OSES website includes a sample form that may be used, but is not required, to file a complaint.
- (4) If a complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint, that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved through the complaint process.

Investigating the Complaint

- (1) The complaint investigator at the SDE must resolve a complaint within 60 calendar days from the date the complaint is received by both parties unless exceptional circumstances exist or the parents and district agree to extend the time to engage in mediation or in other alternative means of dispute resolution. During the 60 days, the complaint investigator must carry out an independent investigation, including an on-site investigation if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the district with the opportunity to respond to the complaint; review all relevant information and make an independent determination as to whether the district is violating a requirement of the IDEA, the applicable state and federal regulations, or state or district policies and procedures; and issue a written decision.
- (2) The complaint investigator may contact the person making the complaint and the special education director to clarify the issue(s), review all relevant records and documents, and determine whether or not the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of federal or state special education laws or regulations or the state's or district's policies and procedures. The investigator will contact the district against which the complaint is filed to allow the district to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint. Both parties can provide

additional information to the investigator that is relevant to the issue. It is left to the complaint investigator to review and determine the relevance of any additional information.

- (3) After the investigation, the complaint investigator issues a written decision addressing each of the allegations in the complaint. The written decision includes:
 - (a) findings of fact and conclusions;
 - (b) the reasons for SDE's final decision; and
 - (c) any corrective action or actions that are required including the specific period of time within which each corrective action must be completed.
- (4) The written decision is final and not subject to appeal although both parties retain all rights to mediation and/or due process hearing to further pursue the matter. There is no reconsideration of a decision rendered during the state-level complaint investigation process.

Following up on the Complaint

- (1) When the corrective actions are completed by the district, the complaint investigator sends a letter of completion to the district with a copy to the person making the complaint. At that point, the complaint file is closed. Any findings made by the complaint investigator during the course of the investigation that are not directly related to the student named in the complaint are forwarded to the General Supervision and Program Units in the OSES for follow up.
- (2) The Office of General Counsel maintains a database to assist in the management of timelines regarding complaints, responses, written decisions, and corrective actions. Issues identified in complaints are discussed with the Program and General Supervision Units in order to identify and verify individual and systemic findings of noncompliance and to assist in the provision of targeted technical assistance to districts.

Due Process Hearing

Filing the Due Process Hearing Request

The district, the parents of a child with a disability, or the student (if the student is age 18 or older) has the right to file a due process hearing complaint. A special education due process hearing may be initiated to resolve differences about a child's identification, evaluation, educational placement, or provision of a FAPE. The due process complaint must allege a violation that occurred not more than two years before the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint. There are two exceptions to this timeline when:

- a. the district has misrepresented that it has resolved the problem, or
- b. the district has withheld information that it was legally required to give to the parent.

Requesting a Due Process Hearing

The party filing the complaint sends a copy of the due process hearing request to the other party and to the Office of General Counsel. This notice is confidential and must contain the following information:

- a. name of the child;
- b. address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- c. name of the school the child is attending;
- d. description of the nature of the problem and the facts that form the basis of the complaint; and
- e. a proposed resolution of the problem.

When the district receives this request for a due process hearing, district personnel are required to:

- a. inform parents about mediation;
- b. inform parents of free or low-cost legal services; and
- a. provide a copy of the [Parent Handbook to Special Education](#) for the first due process complaint in the school year .

Assignment of a Special Education Due Process Hearing Officer

- a The district must maintain a current list of trained, qualified special education due process hearing officers. This list must include the names and qualifications of the special education due process hearing officers who are available.
- b. The district may also have hearing officers to resolve other matters not related to special education, such as the district's disciplinary hearing officer. For special education due process hearings, however, a special education due process hearing officer is required. This person is trained and qualified to conduct special education due process hearings. To differentiate between hearing officers, the complete term "special education due process hearing officer" is used in this section.
- c. The district is responsible for conducting due process hearings in accordance with all federal and state requirements, including assigning special education due process hearing officers. The district is required to appoint a special education due process hearing officer within 10 calendar days of receiving or initiating a hearing request.
 - (1) A special education due process hearing officer must
 - (a) have no personal or professional interest that would conflict with his or her objectivity.

- (b) not be an employee or former employee (an officer, agent, district board official) of the district that is responsible for the child's education.
 - (c) have knowledge and understanding of the IDEA and legal interpretations pertaining to law;
 - (d) have knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (e) have knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - (f) be at least 21 years of age and a high school graduate (or hold an equivalent credential).
- (2) Only persons who have been trained by the SDE may be special education due process hearing officers. If a special education due process hearing officer does not adhere to the federal and state regulations or policies and procedures, including all timelines, he or she will be removed from the list of qualified hearing officers.
- d. Parents or attorneys representing the parents have the right to raise an objection as to the special education due process hearing officer appointed by the district on the basis of a potential bias or personal or professional conflict. If the determination is made by the special education due process hearing officer that a potential bias or conflict exists, he or she must remove himself/herself and the district must go to the next name of the list of persons qualified to serve as special education due process hearing officers.

Resolution Meeting

- a. When the parent has requested a due process hearing, the Director of Special Services must schedule a resolution meeting to occur within 15 calendar days of receiving the due process requests. The director must convene a resolution meeting with
- (1) the parent,
 - (2) the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and
 - (3) a representative of the district who has the authority to make binding decisions on behalf of the district.
 - (4) The parent and the district determine which members of the IEP team will attend the meeting.
 - (5) The district may not include their attorney unless the parents bring their attorney.
- b. The purpose of this meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint. The district then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the district signs. The agreement is,

by law, enforceable in any state or federal court of competent jurisdiction. However, the law also permits either party to void the agreement within 3 business days of the date the agreement was signed. The resolution agreement must be signed by the parent and a representative of the district that has the authority to bind the district.

- c. If a resolution of the complaint is not reached at the meeting and the district has not resolved the complaint to the satisfaction of the parent within 30 calendar days of the district's receipt of the complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence. This includes the issuance of a written decision within 45 calendar days after the end of the resolution period. If no resolution is reached during the resolution session and the parties do not believe they can reach a mutually agreeable resolution, the parties may contact the special education due process hearing officer to request the timeline start prior to the end of the 30-day resolution period.
- d. The parent's failure to participate in a resolution meeting when he or she has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held. In addition, if the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the district may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents' due process complaint.
- e. If the district fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion.
- f. A resolution meeting, however, is not required if the parent and the district agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. If no resolution is reached during the session, the parties may contact the special education due process hearing officer and request the timeline start.

Prehearing Requirements

- a. The party receiving a due process hearing request must send the party filing the request a response that specifically addresses the issues raised in the complaint within 10 calendar days of receiving the complaint.
- b. If either the district or the parent believes that a due process complaint it has received does not meet the legal notice requirements the party may submit to the special education due process hearing officer a sufficiency challenge.

- (1) The sufficiency challenge must be submitted within 15 calendar days of the date of the party's receipt of the due process complaint.
 - (2) The special education due process hearing officer has up to 5 calendar days from the receipt of the sufficiency challenge to determine whether or not the original complaint notice is sufficient.
 - (3) The special education due process hearing officer shall immediately notify the parents and the district in writing of his or her decision.
- c. If the district has not sent a PWN to the parent regarding the problem described in the parent's due process complaint notice, the district, within 10 days of receiving the complaint, must send to the parent a response that includes:
- (1) an explanation of why the agency proposed or refused to take the action raised in the complaint;
 - (2) a description of other options that the IEP team considered and the reasons why those options were rejected;
 - (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (4) a description of the other factors that are relevant to the agency's proposed or refused action .
- d. A party may amend its due process complaint notice only if:
- (1) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or
 - (2) the special education due process hearing officer grants permission not less than 5 days before a due process hearing occurs. When a complaint is amended the timelines start over.
- e. Within 5 business days prior to a hearing, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the evaluation that they intend to use at the hearing. Failure to provide this evidence to the other party in a timely fashion gives the other party a right to request that the special education due process hearing officer prohibit the introduction of the evidence at the hearing.
- f. If the district and the parent agreed to the resolution meeting but have not resolved the issues within 30 days of the date the due process complaint was received, the hearing may begin. Note that the meeting is required unless the parent and the district agree to waive it. Also, note that, if both parties agree in writing to waive the resolution meeting, the 45 calendar day timeline to complete the due process hearing begins the day after the written agreement is signed.

Conducting a Due Process Hearing

- a. The due process hearing must be held at a time and place reasonably convenient to the parent of the child and must be a closed hearing, unless the parent requests an open hearing. The parties shall be notified in writing of the time and place of the hearing at least 5 days prior to the hearing. Both parties have the right to be present at the hearing, as well as be accompanied and advised by legal counsel and people who have special knowledge about children with disabilities.
- b. Parties have the right to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena by the special education due process hearing officer. Under S. C. Code Ann. § 59-33-90 (2004), special education due process hearing officers have the authority to issue subpoenas related to meeting the requirements set forth in the IDEA. Each party may present witnesses in person or present their testimony by affidavit if the due process hearing officer agrees, including expert medical, psychological or educational testimony. Each party has a right to prohibit the other party from raising any issue at the hearing that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing.
- c. Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. They also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents.

Reaching a Decision

- a. The 45 day timeline for completion of a due process hearing starts on the day after *one* of the following events occurs:
 - (1) both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
 - (2) the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
 - (3) both parties agree, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation.
- b. A special education due process hearing officer may grant extensions of time upon request of either party unless the due process hearing is an expedited hearing. The request must be in writing. Extensions should only be granted for good cause. The concept of good cause does not include negligence, inconvenience, or lack of preparation on the part of the parties. The special education due process hearing officer must notify the parties in writing of the decision to grant or deny

the extension request. If the request is granted, the decision must also include a definite date for the timeline to resume.

- c. After the close of the special education due process hearing, the special education due process hearing officer must render a decision on the matter, including findings of fact and conclusions, within 10 calendar days. The decision must be written or, at the option of the parent, must be an electronic decision. Any action of the special education due process hearing officer resulting from a due process hearing shall be final, subject to appeal and review.
- d. A written decision of the result of any hearing must be provided to the district and must be sent by certified mail to the parent or attorney of the child. In addition, the special education due process hearing officer must delete personally identifiable information from the report and send a copy to the Office of General Counsel, which must make the decision available to the Special Education Advisory Council.

Appealing the Due Process Decision

- a. If the district or the parents are dissatisfied with the decision of the special education due process hearing officer, either party may file a notice of appeal with the Office of General Counsel not later than 10 calendar days after the date of the receipt of the written decision. A request for an extension to file an appeal (beyond the 10-day time limit) must be made in writing to the Office of General Counsel within 5 days of the receipt of the local decision. Within ten business days of receiving a request for an extension to file an appeal, the state-level review officer may grant the request for good cause shown. The concept of “good cause” may not include negligence or a matter of low priority in filing the request for appeal. In no event will the state-level review officer grant an extension of more than 20 days beyond the original 10-day timeline.
- b. The appeal should include a statement of the decision of the local due process hearing officer, the specific points being appealed, copies of all items entered as evidence, and the names and addresses of the parents if the district is appealing the decision. The appealing party may also include written arguments. When parents appeal the decision, the district must provide a statement of the decision and copies of all items entered as evidence. The district must also provide a written transcript of the local due process hearing to the Office of General Counsel. The Office of General Counsel must appoint a state-level hearing officer and submit to the state-level hearing officer the request for appeal, the transcript, and any other relevant documentation.
- c. The state-level due process hearing officer must conduct an impartial review of the hearing and make an independent decision based on the review. The review officer must conduct the review according to the following requirements:

- (1) Examine the entire hearing record; an audiotape of the hearing must be made. The district must have a court reporter to record the proceedings. The district is responsible for ensuring that the transcript of the proceedings will be available as required by the state appeal procedures; this includes the provision of advance notice to the court reporter concerning the appeal timelines and the possible need for a quick turnaround time in producing the transcript.
 - (2) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 C.F.R. § 300.512 apply; and
 - (4) Afford the parties an opportunity for oral or written arguments, or both, at the discretion of the reviewing official.
- d. The decision of the state-level review officer is final unless either party chooses to bring a civil action in either state or federal district court of competent jurisdiction. Personally identifiable information is also deleted from the report, and is made available to the Special Education Advisory Council and to the public by the Office of General Counsel.

Stay-put

- a. While the due process hearing is pending, the student involved in the complaint must remain ("stay-put") in the current educational placement, unless:
- (1) The parents and the district agree to a different placement.
 - (2) The proceedings arise in connection with the initial admission of the child to school, in which case the child will be placed in the appropriate regular education classroom or program, unless otherwise directed by a special education due process hearing officer because a child's behavior is substantially likely to result in injury to the student or to others.
 - (3) The student is in an IAES for disciplinary reasons. See the section on suspension and expulsion of students with disabilities for a more complete explanation of stay-put requirements under disciplinary actions.
- b. If the due process hearing involves an evaluation or initial services under Part B for a child who is transitioning from Part C services to Part B services and is no longer eligible for Part C services because the child has turned age three, the district is not required to provide the Part C services that the child was receiving. However, if the child is found eligible for special education services and related services under Part B, and the parent consents to the initial provision of special education and related services, then the district must provide those special education and related services that are not in dispute between the parent and the district.

Civil Action

- a. After a local due process hearing or an appeal of that hearing is completed, either the parents or the district may pursue a civil action through a state or federal court for reimbursement of attorneys' fees.
- b. Federal and state regulations allow the civil action by either party.

Attorney's Fees

- a. If the parents prevail in the due process hearing or upon appeal, a court may award some or all of the attorney's fees parents have paid in conjunction with the due process hearing. Only a court can award attorney fees to the parents and only if the parents are the prevailing party. Although the special education due process hearing officer has no authority to order attorney's fees, the hearing officer must find that the party seeking attorney's fees is a prevailing party in the action. There may be limitations, however, on the amount of attorney fees ordered by the court. For example, if the court finds that the parents prolonged the process or if the fees charged are more than the hourly rate usually charged, the judge has the authority to reduce the award requested by the parents.
- b. The district may be awarded attorney fees
 - 1) if a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation, or
 - 2) if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. In determining the amount of the reimbursement of attorney fees, the judge must follow the IDEA regulations.

Expedited Due Process Hearings

- a. Whenever a due process hearing is requested by a parent to appeal a decision regarding placement for disciplinary reasons, a manifestation determination, or a decision concerning extended school year services or when the hearing is requested by the district that believes maintaining the current placement of a child is substantially likely to result in injury to that child or to others, the hearing is considered to be expedited. The district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing

- b. Unless the parents and district agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within 7 days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

- c. The decisions from expedited due process hearings are appealable consistent with 34 C.F.R. § 300.514. When an appeal is made by either the parents or the district, the child must remain in the IAES pending the decision of the special education due process hearing officer or until the expiration of the time period (period of disciplinary removal if the behavior is not a manifestation of the disability or period due to removal for special circumstances – drugs, weapons, or serious bodily injury), whichever occurs first, unless the parent and district agree otherwise.