

SOUTH CAROLINA STATE REGISTER DISCLAIMER

While every attempt has been made to ensure the accuracy of this State Register, the Legislative Council makes no warranties or representations regarding its accuracy or completeness, and each user of this product understands that the Legislative Council disclaims any liability for any damages in connection with its use. This information is not intended for commercial use and its dissemination by sale or other commercial transfer is not authorized, absent a written licensing agreement with the Legislative Council. For further information contact the Legislative Council at 803-734-2145.

SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

STEPHEN T. DRAFFIN, DIRECTOR
LYNN P. BARTLETT, EDITOR

P.O. BOX 11489
COLUMBIA, SC 29211
TELEPHONE (803) 734-2145

Published April 27, 2001

Volume 25 Issue No.4

This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

THE SOUTH CAROLINA STATE REGISTER

An official state publication, *The South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action, must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

STYLE AND FORMAT OF THE SOUTH CAROLINA STATE REGISTER

Documents are arranged within each issue of the *State Register* according to the type of document filed:

Notices are documents considered by the agency to have general public interest.

Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

Proposed Regulations are those regulations pending permanent adoption by an agency.

Pending Regulations Submitted to General Assembly are regulations adopted by the agency pending approval by the General Assembly.

Final Regulations have been permanently adopted by the agency and approved by the General Assembly.

Emergency Regulations have been adopted on an emergency basis by the agency.

Executive Orders are actions issued and taken by the Governor.

2001 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the Standards Manual for Drafting and Filing Regulations.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made **by 5:00 P.M.** on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/12	2/9	3/9	4/13	5/11	6/8	7/13	8/10	9/14	10/12	11/9	12/14
Publishing Date	1/26	2/23	3/23	4/27	5/25	6/22	7/27	8/24	9/28	10/26	11/23	12/28

REPRODUCING OFFICIAL DOCUMENTS

All documents appearing in the South Carolina *State Register* are prepared and printed at public expense. All media services are especially encouraged to give wide publicity to all documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the Office of the State Register is available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 734-2145.

CERTIFICATE

Pursuant to Section 1-23-20, Code of Laws of South Carolina, 1976, this issue contains all previously unpublished documents required to be published and filed before the closing date of the issue.

Lynn P. Bartlett
Editor

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with Federal Law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be renewable once.

X-----X-----X

SUBSCRIPTIONS

The *State Register* is published on the fourth Friday of each month by the Legislative Council of the General Assembly of the State of South Carolina. Subscription rate is \$95.00 per year postpaid to points in the United States. Partial subscriptions may be ordered at the rate of \$8.00 per issue for the remainder of a subscription term. Subscriptions begin July 1 and end June 30.

Changes of address, notices, subscription orders, and undelivered copies should be sent to:

**South Carolina State Register
P.O. Box 11489
Columbia, South Carolina 29211**

I would like to order _____ subscription(s) to the South Carolina *State Register* at an annual rate of \$95.00 (sales tax already included).

Enclosed is my check or money order for \$_____. Date _____

Name _____

Address _____

Telephone _____

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

Status and Legislative Review Expiration Dates 1

GOVERNOR=S EXECUTIVE ORDERS

No. 2001-08 Time Extended for Report from The South Carolina Home and Community-Based Services Task Force from June 28, 2001 to September 3, 2001 3
No. 2001-09 Establishing The Governor=s Task Force on Affordable Housing 3

NOTICES

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF
Certification of Need 5
Underground Storage Tanks 7

NOTICES OF DRAFTING REGULATIONS

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF
Air Pollution Control Regulations and Standards 8
Classified Waters 8
Individual Waste Disposal Systems 9
State Primary Drinking Water 9
Waste Combustion and Reduction 9

PROPOSED REGULATIONS

CONSUMER AFFAIRS, DEPARTMENT OF
Document No. 2627 Staff Leasing Services: Application Procedure; Application Form; Confidential Information; Denial of Application; Request for Hearing; Positive Net Worth 11

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF
Document No. 2593 Air Pollution Control - Nitrogen Oxides 12

HIGHER EDUCATION, COMMISSION ON
Document No. 2626 Nonpublic Postsecondary Institutions 14
Document No. 2625 South Carolina Student Loan Corporation 19

TABLE OF CONTENTS

FINAL REGULATIONS

EDUCATION, BOARD OF

Document No. 2590	Adult Education Curriculum	22
Document No. 2591	Adult Education Program	23
Document No. 2592	State Plan for Adult Education	27
Document No. 2607	Special Education, Education of Students with Disabilities New Title: Criteria for Entry into Programs of Special Education for Students with Disabilities	27
Document No. 2604	Special Education, Education of All Handicapped Children New Title: Special Education, Education of Students with Disabilities	48

HIGHER EDUCATION, COMMISSION ON

Document No. 2514	LIFE and Palmetto Fellows Scholarship Appeals	116
-------------------	---	-----

INSURANCE, DEPARTMENT OF

Document No. 2553	Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities	119
-------------------	--	-----

JOBS-ECONOMIC DEVELOPMENT AUTHORITY

Document No. 2521	Loan Eligibility Requirements.....	121
-------------------	------------------------------------	-----

LABOR, LICENSING AND REGULATION, DEPARTMENT OF

Commissioners of Pilotage for the Port of Charleston

Document No. 2596	Short Branch Qualification.....	122
-------------------	---------------------------------	-----

Board of Medical Examiners

Document No. 2550	Criteria for Physician Supervision of Nurses in Extended Role	122
-------------------	---	-----

Board of Nursing

Document No. 2578	Official Identification	123
-------------------	-------------------------------	-----

Occupational Safety and Health

Document No. 2624	Occupational Safety and Health	124
-------------------	--------------------------------------	-----

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

In order by General Assembly review expiration date
 The history, status, and full text of these regulations are available on the
 South Carolina General Assembly Home Page: www.scstatehouse.net

DOC NO.	RAT NO.	FINAL SR	SUBJECT	EXP. DATE	AGENCY
1981	SR25-1		Policy Development	1 12 01	Board of Education
1984	SR25-1		Principal Evaluation	1 12 01	Board of Education
2481	SR25-2		School Transportation	1 24 01	Board of Education
2504	SR25-2		Environmental Protection Fees	1 27 01	Department of Health and Envir Control
2502	SR25-2		Public Pupil Transportation Services	2 04 01	Board of Education
2485	SR25-3		(Repeal) Credit and Discount Plans	2 20 01	Department of Insurance
2487	SR25-3		(Repeal) Merit Rating Plan	2 20 01	Department of Insurance
2486	SR25-3		(Repeal) Refusal to Write, Cancellation	2 20 01	Department of Insurance
2511	SR25-3		Hunt Units and WMA=s	2 20 01	Department Natural Resources
2503	SR25-3		Optional State Supplementation Prog	2 27 01	Health and Human Services Commission
2507	SR25-3		Student Loan Corp, Repayment	3 06 01	Commission on Higher Education
2514	SR25-4		LIFE, Palmetto Fellows Sch Appeals	3 12 01	Commission on Higher Education
2521	SR25-4		(Repeal) Loan Eligibility Requirements	3 24 01	Jobs-Economic Development Authority
2497			Quarantine of Garbage Fed Swine	4 22 01	Clemson University
2496			Brucellosis Testing	4 22 01	Clemson University
2530			Waste Disp Sites, Landfill Design, Const	5 09 01	Department of Health and Envir Control
2532			SWM: Off Site Treatment Contam Soil	5 09 01	Department of Health and Envir Control
2528			Adjustment of Dollar Amounts	5 09 01	Board of Financial Institutions
2548			Contact with Patients Before Prescribing	5 09 01	LLR: Board of Medical Examiners
2549			Registration of Licenses	5 09 01	LLR: Long Term Health Care Admin
2550	SR25-4		Physician Supervision of Nurses	5 09 01	LLR: Board of Medical Examiners
2526			Licensure Requirements	5 09 01	LLR: Board of Professional CounselorsΨ
2538			X-Rays (Title B)	5 09 01	Department of Health and Envir Control
2579			Practices of Real Estate Appraisers	5 09 01	LLR: Real Estate Appraisers Board
2575			Forms of Practice	5 09 01	LLR: Board of Accountancy
2531			Stds Lic Fac Chem Depend/Addicted Per	5 09 01	Department of Health and Envir Control
2576			Continuing Education	5 09 01	LLR: Board of Architectural Exam
2551			Valuation of Life Insurance Policies	5 09 01	Department of Insurance
2578			Official Identification	5 09 01	LLR: Board of Nursing
2553	SR25-4		Annuity Mortality Tables	5 09 01	Department of Insurance
2525			Adjustment of Dollar Amounts	5 09 01	Department of Consumer Affairs
2547			Seed Certification Standards	5 09 01	Clemson University/Crop Pest Comm
2585			Reduct, Expan, Consolid, Closure, Instit	5 09 01	Commission on Higher Education
2574			Practices of Auctioneers Comm	5 11 01	LLR: Auctioneers Commission
2559			STAR Diploma	5 16 01	Board of Education
2572			Water Classifications and Standards	5 18 01	Department of Health and Envir Control
2523			Sales Tax: Med, Prosthetic, Hearing Aids	5 23 01	Department of Revenue
2563			Definition of Facility Chap 6, Title 12	5 23 01	Department of Revenue
2561			Definition of Facility Chap 37 Title 12	5 23 01	Department of Revenue
2562			Definition of Facility Chap 117 Title 12	5 23 01	Department of Revenue
2564			Accreditation Criteria	5 23 01	Board of Education
2552			Adjustment of Claims Unusual Circum	5 29 01	Department of Insurance
2568			Teaching Exp Acceptable for Credit	5 31 01	Board of Education

2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

2571		Other Experience Acceptable for Credit	5 31 01	Board of Education
2565		Computing the Experience of Teachers	5 31 01	Board of Education
2570		Student Teachers	5 31 01	Board of Education
2595		Chapter Revision	6 01 01	LLR: Engineers & Land Surveyors
2596	SR25-4	Port of Charleston: Short Branch Qualif	6 01 01	LLR: Commissioners of Pilotage
2597		Admission of Expert=s Report as Evidence	6 05 01	Workers= Compensation Commission
2580		Service Contracts	6 05 01	Department of Insurance
2582		Captive Insurance Companies	6 05 01	Department of Insurance
2558		Principal Evaluation Program	6 05 01	Board of Education
2583		Reinsurance Facility Recoupment	6 06 01	Department of Insurance
2541		Lic Comm Residential Care Facilities	6 13 01	Department of Health and Envir Control
2567		Req for Additional Area of Certification	6 14 01	Board of Education
2581		Continuing Insurance Education	6 15 01	Department of Insurance
2600		Need-based Grants Program	6 22 01	Commission on Higher Education
2601		Palmetto Fellows Scholarship Program	6 22 01	Commission on Higher Education
2533		Criminal Justice Information System	6 27 01	Law Enforcement Division
2569		Types and Levels of Credential Classif	6 27 01	Board of Education
2602		Hunt Units and Wildlife Management	6 28 01	Department of Natural Resources
2577		Auth Prescriptions by Nurse Practitioner	7 04 01	LLR: Board of Nursing
2605		Physician Assistants	7 04 01	LLR: Board of Medical Examiners
2603		End-of-Course Tests	7 19 01	Board of Education
2573		Food Stamp Program	7 27 01	Department of Social Services
2609		State Human Resources	7 27 01	Budget and Control Board
2566		Graduation Requirements	8 07 01	Board of Education

REQUEST FOR AN ASSESSMENT REPORT (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2248	4 14 99	Primary and Substantial Portion (Video Game Machines)	Department of Revenue

REQUEST TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2457	1 23 01	Septic Tank Site Evaluation Fees	Department Health and Envir Control
2518	1 25 01	Perinatal Care	Department of Health and Envir Control

RESOLUTION INTRODUCED TO DISAPPROVE (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2360	1 17 01	LIFE Scholarship	Commission on Higher Education

WITHDRAWN:

DOC NO.	DATE	SUBJECT	AGENCY
2433	1 31 01	Hearing Aids; Augmen Comm Devices	LLR: Speech-Language Path & Audio
2469	1 31 01	Volunteer Pharm Tech Free Med Clinics	LLR: Board of Pharmacy
2193	2 28 01	Video Poker; Def "Single Place" ...	Department of Revenue

No. 2001-08

WHEREAS, in Executive Order 2000-26, I established the South Carolina Home and Community-Based Services Task Force and charged it with the responsibility of providing me with a final report and recommendation by June 28, 2001; and

WHEREAS, the Task Force should have a full opportunity to evaluate the options available to our State in addressing the fundamental issue of community-based alternatives for persons with physical, mental, or developmental disabilities; and

WHEREAS, I have been informed that the Task Force needs additional time to complete its work and to prepare the report and recommendation.

NOW, THEREFORE, I hereby extend the time for the Task Force to provide me with a final report from June 28, 2001 to September 3, 2001.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 26th DAY OF
MARCH, 2001.**

**JIM HODGES
GOVERNOR**

No. 2001-09

WHEREAS, the availability of affordable, safe, and sanitary housing for all citizens is essential to the well being of families and to the economic prosperity of the State of South Carolina; and

WHEREAS, affordable housing plays a fundamental role in the quality of life of South Carolina=s citizens, and the State cannot overlook the needs of its citizens; and

WHEREAS, it is in the best interest of the State that citizens have access to affordable housing, which encourages their contributions to their community=s economic growth and viability; and

WHEREAS, as Governor of the State of South Carolina, I am committed to addressing and ensuring improved development of and access to affordable housing to all citizens, including both renters and homeowners.

NOW, THEREFORE, I do hereby establish the Governor=s Task Force on Affordable Housing (ATask Force≅). The objective of the Task Force shall be developing a coordinated strategy to meet the affordable housing needs of South Carolinians who are in need, or facing difficulties in obtaining affordable housing. The Task Force shall:

1. Conduct a comprehensive review of all policy and data issues involved in planning and coordinating housing programs in South Carolina. This review shall analyze the availability and efficacy of existing housing, as well as housing resources and needs. The review shall focus on identifying affected populations, improving the flow of federal and local resources, targeting resources to meet the most critical needs, and removing barriers that impede opportunities for community inclusion.

4 EXECUTIVE ORDERS

2. Review the needs of any population with severe difficulty accessing affordable housing through the private housing market and for whom home ownership is not an affordable option. This review also shall focus on the affordable rental housing shortage, and on housing needs of vulnerable populations, including the elderly, homeless, or individuals with mental or physical disabilities.
3. Analyze the special barriers of accessing affordable housing for those who live in rural communities with inadequate or non-existing infrastructure. The review also shall focus on economic development obstacles and opportunities for affordable housing in rural communities.
4. Examine issues affecting financing of housing for individuals, developers, both for-profit and non-profit, and governmental bodies. This examination also shall examine available funding sources and incentives.
5. Submit a comprehensive written report of its findings to the Governor no later than October 1, 2001. The report must include specific recommendations on how South Carolina can improve housing by legislative, administrative, or agency action.
6. The plan shall contain a timeline for implementation.
7. All affected agencies and other public entities shall cooperate fully with the Task Force's research, analysis and production of the report.
8. The Governor=s Office Division of Constituent Services shall provide staff support as necessary to assist the task force in carrying out the directives of this Executive Order.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 5th DAY OF
APRIL, 2001.**

**JIM HODGES
GOVERNOR**

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication, April, 27, 2001, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 737-7200.

Affecting Anderson County

Addition of one endoscopy suite for a total of five operating rooms and four endoscopy suites.
AnMed Health Campus Outpatient Surgery Center
Anderson, South Carolina
Project Cost: \$204,106

Affecting Barnwell County

Construction of a new forty (40) bed nursing home to replace the existing facility.
Barnwell County Nursing Home
Barnwell, South Carolina
Project Cost: \$2,856,030

Affecting Beaufort County

Establishment and development of a new fixed diagnostic cardiac catheterization laboratory.
Beaufort Memorial Hospital
Beaufort, South Carolina
Project Cost: \$2,566,721

Affecting Greenville County

Addition of a Computed Tomography (CT) Scanner at Eastside Ambulatory Care Center (EACC) located on the Patewood Medical Campus for a total of two (2) CT scanners at EACC.
Eastside Ambulatory Care Center
Greenville Hospital System
Greenville, South Carolina
Project Cost: \$924,200

Affecting Kershaw County

Replacement of mobile Magnetic Resonance Imaging (MRI) services with a fixed based MRI unit and construction of a room to encompass the MRI component.
Kershaw County Medical Center
Camden, South Carolina
Project Cost: \$1,777,390

Construction of a three story addition and major renovation for the expansion of existing services with the addition of one (1) operating room for a total of four (4) operating rooms.
Kershaw County Medical Center
Camden, South Carolina
Project Cost: \$15,500,000

6 NOTICES

Affecting Oconee County

Renovation of the first floor of the hospital for the addition of two (2) endoscopy suites for a total of four (4) endoscopy suites; relocation of the pharmacy and relocation of the outpatient rehabilitation area to a medical office building on the campus.

Oconee Memorial Hospital
Seneca, South Carolina
Project Cost: \$1,642,500

Affecting Orangeburg County

Replacement of the existing GE 1.0 Tesla Magnetic Resonance Imaging (MRI) unit with a 1.5 Tesla MRI unit.
The Regional Medical Center of Orangeburg and Calhoun Counties

Orangeburg, South Carolina
Project Cost: \$2,057,000

Affecting York County

Lease of space in Baxter Village for the development of an Urgent Care Center.

Piedmont Healthcare System
Rock Hill, South Carolina
Project Cost: \$2,198,538

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning April 27, 2001. Affected persons have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, SC 29201. For further information call (803) 737-7200.

Affecting Darlington County

Construction for a fixed diagnostic cardiac catheterization laboratory to replace a mobile cardiac catheterization unit.

Carolina Pines Regional Medical Center
Hartsville, South Carolina
Project Cost: \$1,572,440

Affecting Greenville County

Addition of a Computed Tomography (CT) Scanner at Eastside Ambulatory Care Center (EACC) located on the Patewood Medical Campus for a total of two (2) CT scanners at EACC.

Eastside Ambulatory Care Center
Greenville Hospital System
Greenville, South Carolina
Project Cost: \$924,200

Conversion of 24 long-term psychiatric beds to 24 Residential Treatment Facility (RTF) beds for children and adolescents resulting in a total of 20 long-term psychiatric beds, and 68 RTF beds for children and adolescents.

SpringBrook Behavioral Health System
Travelers Rest, South Carolina
Project Cost: \$58,700

Affecting Kershaw County

Replacement of mobile Magnetic Resonance Imaging (MRI) services with a fixed based MRI unit and construction of a room to encompass the MRI component.

Kershaw County Medical Center

Camden, South Carolina

Project Cost: \$1,777,390

Affecting York County

Establishment of a freestanding Ambulatory Surgery Center with four (4) endoscopy rooms for endoscopy only.

Digestive Disease Endoscopy Center, Inc.

Rock Hill, South Carolina

Project Cost: \$2,943,067

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act. Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and individuals listed below, please submit your comments in writing, no later than

April 23, 2001 to:

Contractor Certification Program

South Carolina Department of Health and Environmental Control

Underground Storage Tank Program

Attn: Barbara Boyd

2600 Bull Street

Columbia, SC 29201

The following companies and individuals have applied for certification as Underground Storage Tank Site Rehabilitation Contractors:

Class I

Advent Environmental, Inc. B Charlotte

Palmetto Environmental Group, Inc.

Class II

8 DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control (Department) proposes to amend Regulation 61-62, *Air Pollution Control Regulations and Standards*. Interested persons may submit their views by writing to Frank Cramer, Division of Air Planning, Development and Outreach, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 pm on May 28, 2001, the close of the drafting period.

Synopsis:

The United States Environmental Protection Agency (EPA) promulgated final rules for new and existing commercial and industrial solid waste incineration (CISWI) units and small municipal waste combustion (MWC) units. These rules were promulgated pursuant to the requirements of sections 111 and 129 of the Clean Air Act (CAA). The rules for CISWI units were published in the *Federal Register* on December 1, 2000 [65 FR 75338], under 40 CFR part 60, subparts CCCC and DDDD. The rules for small MWC units were published in the *Federal Register* on December 6, 2000 [65 FR 76378], under 40 CFR part 60 subparts AAAA and BBBB.

Section 111 of the CAA requires the EPA to publish and periodically revise a list of categories of stationary sources that may contribute significantly to air pollution and requires the EPA to promulgate regulations establishing Federal standards of performance for new sources within these categories. These standards are generally referred to as New Source Performance Standards or NSPS. Under section 111(d), the EPA must also establish emission standards for any existing source for which a standard of performance would apply if the source were new. These sources are generally referred to as designated facilities. Section 129 of the CAA specifically addresses solid waste combustion.

Pursuant to section 111(d) and 129 of the CAA, each state in which a designated facility is operating is required to submit to the EPA a plan to implement and enforce the emission guidelines. Section 129 requires that the State plan be at least as protective as the emission guidelines and requires the EPA to develop a Federal plan if a state fails to submit an approvable State plan. The Department proposes to amend R.61-62, *Air Pollution Control Regulations and Standards* and develop a State plan to incorporate and implement these federal requirements.

Legislative review will not be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Section 48-1-60

Notice of Drafting:

The Department of Health and Environmental Control (DHEC) is considering amending Regulation 61-69, entitled *A Classified Waters*. Interested persons should submit their views in writing to: M. Rheta Geddings, Director, Division of Water Quality, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, all comments must be received by 5:00 p.m. May 28, 2001.

Synopsis:

DHEC is considering reclassifying the waters of Hunting Island State Park, from Class Shellfish Harvesting Areas (SFH) to Class Outstanding Resource Waters (ORW) to protect recreational and ecological resources. These waters are located in Beaufort County. The amendment requires legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-56, Individual Waste Disposal Systems. A Notice of Drafting was previously published in the State Register on May 23, 1997. Interested persons may submit comments to Roger D. Scott, R.S., Division of Onsite Wastewater Management, Bureau of Environmental Health, SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201-1708. All comments received previously will be considered and need not be resubmitted. New comments submitted for the current Notice must be received by 5:00 p.m. on May 28, 2001, the close of the drafting comment period.

Synopsis:

This regulation establishes procedures and criteria for evaluation of sites, issuance of permits, and the installation of individual waste disposal systems.

This amendment will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Section 44-55-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-58, State Primary Drinking Water Regulations. Interested persons may submit their views in writing to Mr. Glenn E. Trofatter, Compliance Assurance Division, Bureau of Water, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments must be received no later than 5:00 p.m. on June 1, 2001, the close of the drafting period.

Synopsis:

The Department proposes to revise the regulations to include, but not be limited to, adding requirements for distribution system certified operators for all community and non-community, non-transient water systems. In addition, the Department proposes to revise the regulations to eliminate requirements which no longer apply, add design requirements to address new drinking water treatment technologies, address design and operational issues associated with pumping drinking water into aquifers for storage and recovery and clarify existing requirements where necessary. These revisions may include rearranging and renumbering of the regulations to improve overall readability and organization. The proposed revisions will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend Regulation 61-62.5, Standard Number 3, *Waste Combustion and Reduction*. The purpose of this notice is to extend the drafting period previously established by the

10 DRAFTING

July 28, 2000, drafting notice published in Volume 24, Issue 7 of the *State Register*. All previous comments, as well as any additional comments received after this publishing, will be considered. Interested persons may submit their views by writing to Julie Seel, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 pm on May 28, 2001, the close of the drafting period.

Synopsis:

On June 25, 1999, a revision to Regulation 61-62.5, Standard 3, *Waste Combustion and Reduction*, was published in the *State Register* (Document Number 2352). The Department undertook this revision for the purpose of clarifying portions of the regulation, not to add new requirements or make the regulation any more stringent. However, as the regulation was in the final steps of being promulgated, several industry groups brought forward concerns about the interpretation of certain aspects of the regulation. Specifically, when the emission limitations for industrial and utility boilers were converted from lb/1000 gallons of liquid waste or waste fuel being burned to lb/10⁶ BTU total heat input, some facilities that burned coal in addition to waste fuel found that the metals inherent to coal would possibly preclude them from meeting the emission limitations if the unit also combusted waste. To resolve this issue, the Department published a Notice of General Public Interest in the *State Register* on June 25, 1999. The notice established three options for determining emission limitations for industrial and utility boilers that burn coal and waste and stated that these options would be available to facilities until such time as the Department revised the regulation.

The Department proposes to revise Regulation 61-62.5, Standard 3, *Waste Combustion and Reduction*, to review the emission limitations stated above. In addition, the Department intends to review the exemption provided for total reduced sulfur control devices that burn other waste fuels and may consider other amendments as determined to be necessary.

Legislative review will be required.

Document No. 2627
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Section 40-68-20

R28-910. Application Procedure; Application Form; Confidential Information; Denial of Application; Request for Hearing; Positive Net Worth.

Preamble:

The Department proposes to amend Regulation 28-910 to change the Department's office address where applicants may visit to obtain application materials. The Department's new office address is 3600 Forest Drive, Third Floor, Columbia, S.C. 29204. The proposed amendments will also clarify the Department's procedures for handling incomplete/deficient applications by establishing a time limit for completing application materials after notification by the Department. The Notice of Drafting was published in the *State Register* on February 23, 2001. No comments were received.

Notice of Public Hearing and Opportunity for Public Comment:

Should a public hearing be required, it will be conducted on May 31, 2001, at 10:00 a.m. at 3600 Forest Drive, Third Floor, Columbia, South Carolina. Written comments may be directed to Mr. Herbert Walker, Deputy Director for Administrative and Regulatory Services, Department of Consumer Affairs, Post Office Box 5757, Columbia, SC 29250-5757, or e-mail walker@dca.state.sc.us. Comments must be received no later than 5:00 p.m. on May 28, 2001.

Preliminary Fiscal Impact Statement:

There will be no additional cost incurred by the State and its political subdivisions in complying with the proposed regulation.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Regulation 28-910, Application Procedure; Application Form; Confidential Information; Denial of Application; Request for Hearing; Positive Net Worth.

Purpose: Regulation 28-910 is being amended.
Legal Authority: Section 40-68-20, S.C. Code of Laws
Plan for Implementation: The proposed amendments will take effect upon approval by the General Assembly and publication in the *State Register*. The proposed amendments will be implemented by providing the regulated community with copies of the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

This statement of need and reasonableness was determined by staff analysis of initial application materials received over time. This regulation will ensure that applicants complete the application process timely.

DETERMINATION OF COSTS AND BENEFITS: None

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGUALTION IS NOT IMPLEMENTED: None

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net if you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2593

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: S.C. Code Section 48-1-10 et seq.

Preamble:

On December 22, 2000, the Department published a Notice of Proposed Regulations in Volume 24, Issue 12 of the *State Register* identified as Document 2593. The notice contained proposed amendments to the South Carolina State Implementation Plan (SIP) and the addition of two new regulations for incorporation into R.61-62, *Air Pollution control Regulation and Standards*, as follows: R.61-62.96, *Nitrogen Oxides (NO_x) Budget Trading Program*, and R.61-62.99, *Nitrogen Oxides (NO_x) Budget Program Requirements for Stationary Sources Not In the Trading Program*. On April 12, 2001, a public hearing was held before the Board of Health and Environmental Control pursuant to S.C. Code Section 1-23-111 concerning the proposed SIP revision and regulations proposed in Document 2593. At the conclusion of the public hearing, the Board instructed staff to provide public notice and an additional 30-day comment period to allow an opportunity for public comment on proposed amendments of R.61-62.99, *Nitrogen Oxides (NO_x) Budget Program Requirements for*

12 PROPOSED REGULATIONS

Stationary Sources Not In the Trading Program. As instructed by the Board, the extended comment period is to be limited to proposed changes to Sections 99.41 and 99.42, concerning applicability and definitions.

This current Notice, published in the State Register as Document 2593 on April 27, 2001, is a supplement to the Notice of Proposed Regulations originally published in the State Register as Document 2593 on December 22, 2000, and does not replace or supersede the original Notice. The Department intends to promulgate regulations based on the original Notice of Proposed Regulations, comments received in response to the original Notice, and comments received in response to this current Notice. Comments received previously as a result of the December 22, 2000, publication will be considered and need not be resubmitted.

A Notice of Drafting for the proposed amendments was published in the *State Register* on November 27, 1998. A second Notice of Drafting was published in the *State Register* on July 28, 2000.

Discussion of Proposed Revisions

SECTION CITATION:	EXPLANATION OF CHANGE
Section 99.41, Applicability	Add language to specify that these requirements apply to kilns that have NO _x emissions greater than 1 ton per day.
Section 99.42, Definitions	Revise definitions for long wet kiln and long dry kiln to delete reference to the diameter and length of the kiln.

Notice of Board Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed revision at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on June 14, 2001, to be held in Room 3420 (Board Room) of the Commissioner=s Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board=s agenda to be published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed revision by writing to Heather Preston at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on May 29, 2001. Comments received shall be considered by the staff in formulating the final regulations for public hearing on June 14, 2001, as noticed above. Comments received shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: The proposed amendment will clarify that the requirements of 61-62.99, *Nitrogen Oxides (NO_x) Budget Program Requirements for Stationary Sources Not In the Trading Program* are applicable to kilns that have NO_x emissions greater than 1 ton per day.

Legal Authority: The legal authority for R.61-62 is Sections 48-1-10 et seq., S.C. Code of Laws.

Plan for Implementation: The proposed amendments will take effect upon approval by the Department=s Board, the General Assembly and publication in the *State Register*. The proposed amendments will be implemented by providing the regulated community with copies of the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

On October 27, 1998, the United States Environmental Protection Agency (EPA) published a final rule titled, *A Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone* [63 FR 57355]. This rule, also known as the NO_x SIP Call, requires South Carolina and certain other states to limit the summertime emissions of oxides of nitrogen (NO_x) which are one of the precursors of ozone pollution. The NO_x SIP Call requires reductions of summertime emissions of NO_x in South Carolina and requires the Department to submit a revision to the South Carolina State Implementation Plan (SIP) that identifies measures necessary to achieve these reductions.

14 PROPOSED REGULATIONS

On December 22, 2000, the Department published proposed regulations in the State Register to comply with the requirements of the NO_x SIP Call. Following the publication of the proposed regulations, the Department received a comment from EPA stating that the Department must revise the proposed regulation 61-62.99, *Nitrogen Oxides (NO_x) Budget Program Requirements for Stationary Sources Not In the Trading Program* to specify that the regulation applies to kilns that have NO_x emissions greater than 1 ton per day. According to EPA, in order for them to proceed with approval of the SIP revision, the Department must revise the applicability language for cement kilns or seek comparable NO_x reductions from other sources. If the Department fails to submit an approvable SIP, the EPA will establish a Federal Implementation Plan that will include reductions from the cement kilns as specified above.

DETERMINATION OF COSTS AND BENEFITS:

The EPA has determined that the national annual cost to comply with the NO_x SIP Call is approximately \$1.7 billion in 1990 dollars [63 FR 57478]. The associated benefits, in terms of improvements in health, crop yield, visibility, and ecosystem protection, that EPA has quantified range from \$1.1 billion to \$4.2 billion.

UNCERTAINTIES OF ESTIMATES:

EPA has attempted to simulate a possible set of State implementation strategies and estimates the cost and benefits associated with that set of strategies. Due to practical analytical limitation, the EPA is not able to quantify all potential costs and benefits.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The EPA has determined that the pollution-reduction measures required by these regulations will result in benefits to the public health and improvements in crop yield, visibility, and ecosystem protection.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

If these regulations are not implemented then the public health benefits and other environmental improvements cited above may not be realized.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2626

COMMISSION ON HIGHER EDUCATION

Chapter 62

Statutory Authority: 1976 Code Sections 59-58-10 through 59-58-140

Preamble:

The Commission proposes to amend the regulations governing Nonpublic Postsecondary Institutions to address issues that have evolved since the General Assembly adopted the regulations in 1993 and amendments in 1995. The proposed amendments will:

- (1) Automatically encompass the definitions contained in the statute;
- (2) Provide parameters for issuance of licenses for new programs and sites;

- (3) Refine the language for learning resources and further define good reputation for an institution owner and director;
- (4) Specify requirements for programs offered by distance education;
- (5) Refine financial resources required for licensure;
- (6) Prescribe curricula content;
- (7) Establish additional disclosures institutions must make to students;
- (8) Redefine the refund policy for Title IV eligible institutions;
- (9) Refine the requirements for maintenance of student records;
- (10) Amend the fee and fine authority;
- (11) Refine deceptive trade and sales practices and advertising guidelines;
- (12) Specify that, if the Commission places a license in probation status, the Commission may require the institution to delay matriculation of new students

Section-by-Section Discussion

- 62-2 Remove the specific terms as defined by statute so that the regulation includes the terms by reference to the statute.
- 62-4.E. Add provision that the Commission may not license new activities if the new activities threaten the financial stability of the institution.
- 62-6.C. Refine requirement for access to sufficient learning resources and define formal agreements.
- 62-6.J.(1) Errata B correct to use parallel grammar
- 62-6.J.(2) Errata B correct to use parallel grammar
- 62-6.J.(4) Add provision that an owner or director of an institution cannot be a plaintiff or defendant in litigation that carries a significant risk to the ability of the institution to continue operation.
- 62-6.J.(5) Renumbered (4) to (5)
- 62-6.J.(6) Renumbered (5) to (6)
- 62-6.1. Add general requirement that programs offered by distance education must meet the licensing requirements and the policies, guidelines, and procedures regarding distance education adopted by the Commission.
- 62-8. Add provision that each institution must possess adequate liquid assets to make potential refunds and pay expenses in a timely fashion, and for initial licensure must possess liquid assets for start-up costs, expenses, and projected tuition income for the first term of enrollment.
- 62-8.A Expand adequate financial records requirement to specifically include proper management, controls, and business practices.
- 62-10.A. Add general education requirements for diploma programs.
- 62-10.D. Add provision that notwithstanding the requirements of Section 62-10, the Commission may license out-of-state institutions that have recognized accreditation to recruit in South Carolina.
- 62-11.B. Specify 15 semester hours in general education course requirements for associate degree programs
- 62-11.C. Add language to define purpose of associate in arts and associate in science degrees as transfer and the requirement that 50 percent of the credit hours consist of college-level courses in the arts and sciences.
- 62-11.D. Add language to require that 50 percent of occupational degree curricula be in related technical course instruction.
- 62-11.E. Renumber D to E.
- 62-11.F. Renumber E to F.
- 62-11.G. Renumber F to G.
- 62-11.H. Renumber G to H.
- 62-11.I. Renumber H to I; amend the regulation so that faculty credentials must be awarded by an accrediting agency recognized by the U.S. Department of Education instead of the Council on Postsecondary Accreditation.
- 62-11.J. Add provision that notwithstanding the requirements of Section 62-11, the Commission may license out-of-state institutions that have recognized accreditation to recruit in South Carolina.
- 62-12.A. Add language to require that baccalaureate degree programs include a minimum of 30 semester hours of general education course requirements in specific subjects.
- 62-12.D. Amend the regulation so that faculty credentials must be awarded by an accrediting agency recognized by the

16 PROPOSED REGULATIONS

- U.S. Department of Education instead of the Council on Postsecondary Accreditation.
- 62-12.E. Add language that teacher certification programs must meet the requirements of the South Carolina Department of Education.
- 62-13.D. Add language that teacher certification programs must meet the requirements of the South Carolina Department of Education.
- 62-14. Refine provision for learning resources so that licensed institutions ensure access via current and formal written agreements with other libraries or from other resources.
- 62-16.H. Add ASouth Carolina≅ to catalog reference to licensure by the Commission on Higher Education.
- 62-16.I. Expand references to accreditation to include program accreditation.
- 62-16.K. Add requirements and procedures for obtaining any licensure, registration, or certification required or advantageous for the occupational field.
- 62-18. Amend the regulation so that institutions approved for eligibility for Title IV Student Financial Aid must comply with the federal regulations regarding computation of refunds to students.
- 62-20. Add requirement that institutions store official student academic records in a secure vault or fireproof cabinet or store duplicates in a different building or at an off-site location, have adequate security measures in place to protect and back up electronically stored records, and have retention, disposal, and information-release policies.
- 62-20.A. Add the provision that institutions may destroy certain records no longer needed for reference as the Commission deems appropriate.
- 62-20.B. Add that institutions must maintain transcripts 50 years from graduation or termination (or a shorter time as the Commission deems appropriate for programs or courses for which it is unlikely that students will need documentation of attendance) as adequate minimum time for maintenance of Apermanent≅ records.
- 62-20.D. Add provision that institutions must have in place at all times the capability to transfer academic records (easily accessible in format and system) for former and current students.
- 62-23.A. Increase initial licensure and renewal fees from minimum of \$100 to minimum of \$115 and from maximum of \$1,000 to maximum of \$1,150.
- 62-23.B.(1) Remove limit on late fee; add authority to reactivate late fee for incomplete applications for renewal of licenses.
- 62-23.B.(2) Add authority to waive or reduce late fee in case of mitigating circumstances.
- 62-23.C. Increase fee for amendment of license to move an existing location or site from \$50 to \$60.
- 62-23.D. Increase fee for amendment of license to add a program from minimum of \$50 to \$75 and a maximum of \$500 to \$575.
- 62-23.E. Increase fee for re-issuance of license for program or institution name change from \$25 to \$30.
- 62-23.F. Increase fee for initial and renewal of agent permit from \$25 to \$30.
- 62-23.I. Add authority to assess a fine for failure to respond in a timely manner to a request for information or for repeat violations involving deceptive trade or sales practices or advertising. The proposed language limits fines to \$1,000 per year.
- 62-23.K. Add authority for the Commission to adjust fees based on the consumer price index or other appropriate indicator.
- 62-25.K. Add provision to prohibit exempt institutions from claiming the Commission=s oversight.
- 62-25.M. Add provision that institutional personnel may not discredit other schools or solicit any student to leave another institution.
- 62-26.D. Add provision that courses offered by distance education must clearly describe the method of delivery.
- 62-26.K. Add requirements for information provided through the Internet or other electronic media.
- 62-27.B. Add provision that if the Commission determines that circumstances upon which a student submits a complaint to the Commission justify, that notwithstanding the institution=s refund policy, the Commission may require an institution to make full or partial refund of tuition or other fees.
- 62-27.C. Add provision that the Commission may intervene on behalf of a person filing a complaint with the Commission involving an institution that is exempt from the oversight of the Commission.
- 62-28.B. Add provision to probation authority that the Commission may require that an institution delay matriculation of new students into a new class term.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted at 10:00 A.M., on Monday, May 28, 2001, by the South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, SC. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Renea H. Eshleman at the South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, SC 29201, or by calling (803) 737.2281 or by e-mail to reshlema@che400.state.sc.us. Comments received will be considered by the staff in formulating the final proposed regulation for the public hearing on May 28, 2001, as noticed above.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATIONS:

- 62-2. Definitions.
- 62-4. Institutional licensing.
- 62-6. Licensing Criteria.
- 62-8. Financial Resources.
- 62-10. Program and Instructor Requirements for Diploma Programs.
- 62-11. Program and Instructor Requirements for Associate Degree Programs.
- 62-12. Program and Instructor Requirements for Baccalaureate Degree Programs.
- 62-13. Program and Instructor Requirements for Graduate Programs.
- 62-14. Library.
- 62-16. Catalog/Bulletin/Brochure Requirements.
- 62-18. Cancellation and Refund Policy.
- 62-20. Student Records.
- 62-23. Fees.
- 62-25. Deceptive Trade or Sales Practices.
- 62-26. Advertising Guidelines.
- 62-27. Procedures for Handling Consumer Complaints.
- 62-28. Revoking, Suspending, or Refusing to Issue or Renew a License.

Purpose:

The purpose of the proposed amendments is, based on the experience of the Commission in application of the licensing requirements, to refine the regulations to address issues and cases that have arisen during application of the legislation since its approval in 1993 and amendments in 1995.

The primary purpose of the licensing process is consumer protection. The statute and regulations establish basic requirements to provide some assurance that students enrolled in licensed institutions may reasonably expect that the programs will fill the objectives and that the institution has in place the resources with which to provide the education and training.

The Commission uses the parameters prescribed by the statute and regulations to determine that the curricula and instruction are of quality, content, and length to achieve the stated objectives reasonably and adequately. Among the specific requirements for licensure, the institution must have adequate space, equipment, instructional material, and appropriately qualified instructional personnel to provide training and education of good quality. It must own or make available sufficient

18 PROPOSED REGULATIONS

learning resources, maintain appropriate written records, and have satisfactory course and program outlines. It must maintain a schedule of tuition, fees, and other charges and provide a refund policy that complies with the regulations. It must have in place rules of operation and conduct, and a policy for handling student complaints. The institution must award the student an appropriate certificate, diploma, or degree showing satisfactory completion of the course, program, or degree. It must maintain adequate records to show attendance and progress or grades. The institution must be financially sound and be able to fulfill its commitments for education or training. Its publications must comply with the requirements of the Commission concerning advertising, disclosures, trade, and sales practices. It cannot use erroneous or misleading advertising by actual statement, omission, or intimation. It must comply with sound practices as appropriate to the type and level of programs it offers.

Legal Authority:

South Carolina Code of Laws, Sections 59-58-10 through 59-58-140

Plan for Implementation:

The proposed amendments will take effect upon approval by the General Assembly and publication in the *State Register*. The proposed amendments will be implemented by providing the regulated community with copies of the amended regulations.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed amendments will simplify the application of the regulations because the amendments refine licensing parameters and give specific authority under applicable circumstances.

The proposed amendments adjust the requirements to address the current academic environment and changes in requirements with which accredited institutions must comply.

The proposed amendments will provide better consumer protection by requiring institutions to adjust their programs and operations to comply with the standards.

DETERMINATION OF COSTS AND BENEFITS: There will be a benefit to institutions in that the regulations will better inform them of credible practices. Non-degree granting accredited institutions the Commission licenses will be able to award the same credential to South Carolina residents as the credential the institutions award to graduates in their home states.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2625
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: Act 512, Part 2 Section 9
 Division 2, Subdivision C, Subpart 1(6)
 Act of Joint Resolution of South Carolina, 1984
 Article 2, South Carolina Student Loan Corporation

Preamble:

The South Carolina Commission on Higher Education proposes to amend these regulations to reflect changes made by the South Carolina Legislature. The changes will expand the eligibility criteria for cancellation of outstanding South Carolina Teacher Loan Program obligations. Current regulations allow recipients cancellation eligibility when they teach in a subject area designated as critical at the time the loan is made. The proposed change will allow recipients cancellation eligibility when they teach in a subject area designated as critical at the time the loan is made or subsequently. The rate of cancellation will be amended. Currently a percentage of the debt is cancelled regardless of the amount of the debt. The amended regulation will allow the greater of the percentage of the debt or a set dollar amount to be cancelled for teaching service. In addition the changes will allow individuals changing careers to enter the teaching profession and individuals participating in the South Carolina Critical Needs Certification Program to receive loan assistance. These regulations propose eligibility criteria and administrative changes for these two groups.

A notice of drafting for the proposed amendments was published in the State Register on March 21, 2001.

Section by Section Discussion

- 62-120(B) New text is added to provide eligibility criteria for individuals changing careers to enter the teaching profession.
- 62-120(C) New text is added to provided eligibility criteria for individuals participating in the South Carolina Department of Education=s Critical Needs Certification Program.
- 62-130(B) New text is added clarifying that for individuals changing careers to enter the teaching profession, to the extent allowed by federal regulation,
 - (1) the amount of assistance received through this program will not be limited or reduced by the receipt of other financial aid, and
 - (2) other types of financial aid will not limit or reduce funds received through this program.
- 62-131(B)(1) New text is added that allows a single disbursement of funds be provided directly to the borrower in the Critical Needs Certification Program annually.
- 62-132(A) New text in added that expands the cancellation rate from 20%to the greater of 20% or \$3000 for a full year of teaching and from 10% to the great of 10% or \$1,500 for a complete term of teaching.
- 62-132(B) New text is added that expands the cancellation rate from 33.3% to the greater of 33.3% or \$5,000 for a full year of teaching and from 16.66% to the greater of 16.66% or \$2,500 for a complete term of teaching.
- 62-132(A)(1) New text is added expanding the subject areas eligible for cancellation to those designated as critical at the time of loan application as well as those designated as critical subsequent to receipt of the loan

20 PROPOSED REGULATIONS

62-132(C)(1) New text is added stating that the amounts borrowed by individuals participating in the Critical Needs Certification Program will enter repayment immediately after the disbursement but payment will not be required while the recipient is eligible for cancellation.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public are invited to make oral or written comment on the proposed regulation at a public hearing to be conducted on June 7 at the South Carolina Commission on Higher Education, 1300 Main Street, Columbia, SC. The meeting will commence at 10:00 a.m. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on proposed amendments by writing to Mike Fox at South Carolina Student Loan Corporation, PO Box 210219, Columbia, SC 29221, or by calling 803-798-7960. Comments must be received no later than 4:00 p.m. on June 4, 2001. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing as noticed above. Comments received by the deadline shall be submitted to the board in a summary of public comments and department responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State or its political subdivisions.

Statement of Needs and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to the S.C. Code Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION: 62-artical II, South Carolina Student Loan Corporation.

Purpose: These regulations are amended to incorporate changes made to the South Carolina Teacher Loan Program by the South Carolina State Legislature. See Preamble and Discussion for details

Legal Authority: Chapter 62, Statutory Authority: Act 512, Part 2 Section 9, Division 2, Subdivision C, Subpart 1(6) Act of Joint Resolution of South Carolina, 1984 Article 2, South Carolina Student Loan Corporation

Plan of Implementation: The proposed amendments will take effect upon approval General Assembly and publication the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulation will provide benefits and incentives to individuals entering the teaching profession and expand benefits to South Carolina Teacher Loan recipients teaching in critical of the State.

DETERMINATION OF COSTS AND BENEFITS: There will be no additional cost to the State.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: None

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

22 FINAL REGULATIONS

Document No 2590
BOARD OF EDUCATION
CHAPTER 43

Statutory Authority S.C. Code Ann. Section 50-30-10 (f); 59-43-10, et seq. and
Workforce Investment Act of 1998 (WIAXP.L. 105B20)

43-237. Adult Education Curriculum

Synopsis: All provisions for adult education programs are included in Regulation 43-259, Graduation Requirements. Therefore, Regulation 43-237, Adult Education Curriculum, needs to be repealed in its entirety.

Instructions: Repeal in its Entirety Regulation 43-237, Adult Education Curriculum, in Chapter 43, Article 19, Table of Contents.

Text:

R. 43-237. Adult Education Curriculum (Regulation is being repealed in its entirety)

Curriculum:

A. Basic Education Program-The curriculum of an adult basic education program shall include organized and systematic instruction in the communication and computational skills of reading, writing, speaking, listening and arithmetic.

B. High School Diploma Program-The number of units shall be consistent with the requirements prescribed by the State Board of Education for adults to complete the requirements for a state high school diploma in the following areas.

1. A minimum of 20 units of credit shall be the basis of awarding the state high school diploma to adults distributed as follows:

Language Arts	4 units ¹
U.S. History	1 unit
Economics (1/2 unit)	
Government (1/2 unit)	1 unit
Other Social Studies	1 unit ²
Mathematics	3 units ³
Natural Science	2 units
Electives	8 units

2. The level of accomplishment required for granting of credit shall be the same as that required in the regular high school program. Class time may be waived only when objective evidence of subject matter attainment has been demonstrated by an acceptable performance on an approved, standardized subject matter exam. Credit granted by objective evidence must be approved by the principal of the high school awarding the diploma. A copy of the test results with information as to date of examination, the name and form of the standardized test, name of examiner, and signature of principal's approval must be filed in the school records for the adult.

3. Membership shall be limited to individuals who are 18 years of age or over and have left the elementary or secondary school, except when the local school board may assign individual students of less than 18 years of age who are not officially in membership in a regular school. These students may be assigned to one or more classes of an adult education program when (1) they exhibit an unusual educational need, or (2) they exhibit physical, social, or economic problems which can be more effectively served by the adult education program. No student under the age of 16 may be assigned to the adult education program for any reason.

4. No student shall be graduated from the adult education program prior to the time that he would normally have been graduated had he remained in the regular high school. A semester shall be completed in residence. (i.e., through actual attendance in the adult education program for one semester) as a prerequisite to being eligible for the State High School Diploma. This semester in residence is a prerequisite for a State High School Diploma and may not be waived.

5. A student may not earn more than eight units through each or a combination of the following methods: (1) credit earned by successfully passing an approved standardized test, (2) credit earned for occupational training and experience, and (3) credit earned through approved correspondence courses.

¹ At least 50 percent of the instructional time in English I, II, III, and IV, and in any other course used to meet the language arts requirements for graduation must be devoted to the teaching of composition and grammar.

² One unit in computer science, if approved by the State Department of Education for this purpose, may be counted toward the mathematics requirement.

³ Students who earn one unit in science and six or more units in a specific occupational service area will meet the science requirements for a state high school diploma. Vocational programs operating on a 3-2-1 structure may count pre-vocational education as one of the six required units.

Fiscal Impact Statement: None

Document No 2591

BOARD OF EDUCATION

CHAPTER 43

Statutory Authority S.C. Code Ann. Section 50-30-10 (f); 59-43-10, et seq. and
Workforce Investment Act of 1998 (WIAXP.I. 105B220)

43-237.1. Adult Education Program

Synopsis: In 1998, the federal government passed the Workforce Investment Act. The Act requires that South Carolina must review and amend current regulations to reflect changes required by federal law. The State Board of Education Regulation 43-237.1, Adult Education Program was amended in 1994 by the State Board of Education.

Instructions: Amend and replace in its entirety Regulation 43-237.1, Adult Education Program, in Chapter 43.

Text:

Regulation 43-237.1, Adult Education Program

43-237.1. Adult Education Program

The program of adult education is provided for adults who want a basic education, to prepare for the High School Equivalency Examination, to develop literacy skills, work-related skills, or to complete the requirements for a State High School Diploma. Enrollment in the program of Adult Education for a State High School Diploma must be limited to adults who are residents in South Carolina.

Each district shall provide adult education in each of the two levels: Level I (grades 1-8) and Level II (grades 9-12). It is recommended that each program offer continuing education in vocational exploration at Level I and vocational courses at Level II as indicated by an assessment of local needs.

24 FINAL REGULATIONS

Cooperation with other agencies and programs is needed to provide for the variety of needs of the adult population. The district with the written approval of the Office of Community Education may contract for the operation of the adult program with another school district in South Carolina. Diploma programs must have written approval from the Office of Organizational Development.

Library/Media Center: Students in membership in the high school diploma program shall have access to school library facilities or have library materials available within the classroom.

District Needs Assessment: The annual needs assessment shall include a thorough status and evaluation of the district's adult education programs. This needs assessment must be submitted on or before October 15.

Adult Education Facilities:

- A. Buildings shall be adequate in size and arrangement.
- B. Buildings shall be kept clean and comfortable.
- C. Each room shall be designed and equipped to serve specific purposes. Adequate lighting, ventilation, and heating shall be provided in all utilized areas.
- D. All operating adult school facilities shall comply with safety regulations prescribed by the State Fire Marshal and with sanitation and health regulations prescribed by the State Board of Health.

Health Certificates: All personnel shall be screened for tuberculosis as required by Section 44-29-150 and Section 44-29-160 of the Code of Laws of South Carolina, 1976, as amended April 24, 1979. Guidelines for screening of school employees for tuberculosis are available in each county health department.

Inservice Education: Each adult education director shall develop and implement an organized inservice education program for professional personnel. Staff members should be involved in the planning and evaluation of these activities which should focus on the problems, needs, purposes, and goals of the adult education program. A copy of the inservice education plan shall be made available to the adult education supervisor upon request.

Length of School Term: Each approved adult education high school diploma program shall meet a minimum of 30 weeks and include a minimum of 60 hours of instruction for each unit of credit (exclusive of registration, exams, issuing materials, etc.).

Attendance: A student must attend class a minimum of 50 hours to receive consideration for credit. Any work missed in the high school completion program must be made up. This requirement does not apply to instances in which credit has been validated by means of an approved standardized test.

Supervision of Instruction: Supervision and improvement of the adult education instructional program is the direct responsibility of the adult education director.

Maintenance of Records: An accurate record of the attendance and achievements of each student shall be kept and should be stored in locked, fireproof filing cabinets or vaults to provide security against possible destruction.

Teaching Load: The maximum student membership in an adult education class shall be 30 students per teacher.

Approved Programs and Granting of Credit: No credit toward a State High School Diploma will be granted to any adult education student unless the program has been officially approved in writing by the Office of Community Education and the Office of Organizational Development. In instances where programs do not meet the minimum length of time, no credit shall be granted to any student in the high school diploma program, unless verified by an approved standardized test.

Appropriations for Instructional Needs: Local adult education plans are to reflect allocations for instructional supplies

as is appropriate. Budgets are to be developed for each adult education course to provide for necessary supplies, instructional materials, repairs, replacements, safety, and enhancement.

See:

- Article 19: BASIC PROGRAM;
- Article 19: GRADUATION REQUIREMENTS;
- Article 17: ADMINISTRATIVE PERSONNEL POSITIONS;
- Article 17: PROFESSIONAL PERSONNEL POSITIONS;
- Article 17: QUALIFICATIONS AND DUTIES, PROFESSIONAL PERSONNEL;
- Article 17: QUALIFICATIONS AND DUTIES, ADMINISTRATIVE PERSONNEL.

I. ALLOCATIONS TO SCHOOL DISTRICTS

Funds shall be allocated to school districts on a per pupil basis as determined by the adult student enrollment as of June 30th each year.

A. General Program Support

1. Based on actual allocations, school districts shall develop a budget which shall include the following allowable expenses: Directors' Salaries, Teacher Salaries, Instructional Materials and Supplies, Other Costs, Employee Benefits and Indirect Costs shall be approved by the Office of Community Education. Disbursements for Teacher Salaries, Instructional Materials and Supplies, and Other Costs shall be paid at a rate as determined by the Local Board of Education.

2. Employee Benefits

Federal and State funds may be used for payment of employee benefits for those employees whose salaries are paid with Federal and State funds.

II. ALLOCATIONS TO OTHER ENTITIES

Allocations to other entities offering approved adult education programs shall be based on grant amount for costs of instruction.

III. ALLOCATIONS TO TECHNICAL COLLEGES

Allocations to Technical Colleges offering adult education programs shall be based on enrollment or student hours of attendance the preceding year. The June enrollment report shall be selected as a basis for determining the amount to be allocated.

IV. 353 PROJECTS

By federal law, a minimum of fifteen percent of the state's federal allotment must be used for special demonstration and teacher training projects. [The Adult Education Act (P. L. 100-297) as amended by the National Literacy Act of 1992 (P. L. 102-73).]

Proposals for 353 Project funds shall be submitted to the State Department of Education, Office of Community Education. Proposals are reviewed by a project review committee. Authorization to fund 353 Projects shall have the approval of the State Superintendent of Education or his/her designee. The State Department of Education may fund pilot 353 projects based on identified needs.

V. BASE AMOUNT

After State Office of Community Education operations, local directors' salaries, 353 Projects and other agencies' or entities' allocations are subtracted from the state and federal grants, the remainder shall be divided by the total enrollment or student hours of attendance of the public school programs. This will produce the base amount per student or hour of

26 FINAL REGULATIONS

attendance for school districts.

VI. NON-FUNDABLE CLASSES

No class or course for adults which is recreational or social shall be eligible for funding; therefore, enrollment in such classes shall not be counted for funding purposes. This standard applies to Physical Education and Physical Fitness classes. Only the classroom portion of Driver Education when offered for high school credit shall be funded with State and Federal Adult Education funds.

VII. ENROLLMENT COUNT

Adult students shall be counted for enrollment only once during a fiscal year. Only adult students that have been instructed a minimum of twelve (12) hours in a class or by a volunteer shall be counted.

VIII. ADVANCE PAYMENT

Upon request, programs may receive 25% of their allocations as an advance. This advance will be recouped as claims are submitted. No advances will be made prior to the final approval of a proposal.

IX. QUARTERLY CLAIMS

The Program Enrollment Report (Form AE-1); and the Adults Education Expenditure Report forms shall be verified by the local adult education director, district superintendent and the Office of Community Education. These forms must be submitted quarterly to the Office of Community Education for reimbursement.

X. REALLOCATION OF FUNDS

Program reports are reviewed quarterly by the staff of the Office of Community Education to ascertain if expenditures are consistent with allocations. In February, the utilization of allocations are evaluated and districts are requested to release any funds that will not be utilized. Released funds are allocated to districts that have programs for which documentation can be submitted demonstrating need for additional funds.

XI. LOCAL FUNDS

Local funds for the adult education program are expended at the discretion of the local school officials.

XII. PROJECT PROPOSALS

Project proposals define the plans and methods by which the program will operate and include a needs assessment of the school district. No reimbursements are made prior to the final approval of a proposal.

XIII. INDIRECT COSTS

If a school district chooses to claim indirect costs, the restricted cost rate is applicable to adult education federal funds.

XIV. TRAVEL REIMBURSEMENT

When travel expenses are reimbursed through the Office of Community Education, the local district's travel regulations are in effect but will not exceed the limits of state employee travel regulations.

XV. MEMBERSHIP

The fees for memberships in professional organizations are not allowable expenditures from State or Federal Adult Education funds.

Fiscal Impact Statement: None

Document No 2592
BOARD OF EDUCATION
 CHAPTER 43

Statutory Authority S.C. Code Ann. Section 59-5-60 (1990), 59-43-20 (1990) and
 Workforce Investment Act of 1998 (WIAXP.L. 105B220)

Synopsis: In 1998, the federal government passed the Workforce Investment Act, under the Act each state was required to develop a new State Plan. Regulation 43-237.2, State Plan for Adult Education, 1989-1998, was amended in 1994 by the State Board of Education. A new State Plan, which is not a regulation, was approved by the State Board of Education in March 2000. Therefore, R.43-237.2, which was a regulation, must be repealed.

Instructions: Repeal in its Entirety Regulation 43-237.2, State Plan for Adult Education, in Chapter 43, Article 19

Text:

R. 43-237.2. State Plan for Adult Education (Regulation is being repealed in its entirety)

NOTE:

This regulation is adopted to comply with Federal law and State Board of Education policies which specify requirements for adult education programs, funding and management.

Because of the extensive length of the full text of this regulation, it does not appear in full in the S.C. Code Ann. 1990 (Supp. 2000) but it is incorporated herein by reference. The full text of this regulation is available for review at the Office of the Legislative Council at the State House and at the Office of Adult Education at the Office of Adult Education of the State Department of Education, Rutledge Building, Columbia, S.C. 29201.

Fiscal Impact Statement: None

Document No. 2607
BOARD OF EDUCATION
 CHAPTER 43

Statutory Authority: S.C. Code Ann. Section 59-5-60 (1990), S.C. Code Ann. Section 59-21-510 (1990 & Supp. 2000), S.C. Code Ann. Section 59-21-560 (1990), S.C. Code Ann. Section 59-21-580 (1990), S.C. Code Ann. Section 59-21-720 (1990), S.C. Code Ann. Section 59-33-20 (1990), S.C. Code Ann. Section 59-33-30 (1990), S.C. Code Ann. Section 59-36-10 (Supp. 2000), S.C. Code Ann. Section 59-36-40 (Supp. 2000), S.C. Code Ann. Section 59-36-50 (Supp. 2000), 20 U.S.C. Section 1400 *et seq.* (1997)

43-243.1 Special Education, Education of Students with Disabilities (new title: Criteria for Entry into Programs of Special Education for Students with Disabilities).

Synopsis:

The State Board of Education proposes to amend and replace in its entirety Regulation 43-243.1 Special Education, Education of Students with Disabilities (new title: Criteria for Entry into Programs of Special Education for Students with Disabilities).

28 FINAL REGULATIONS

On April 13, 1999, the State Board of Education promulgated the Criteria for Program Entry into Programs of Special Education for Students with Disabilities. Since this time the regulations have been reviewed by a group of nationally recognized experts in the field of special education and school psychology. The original editing team along with several leaders in the field of school psychology met and discussed the recommendations of the experts as well as their observations after utilizing the new criteria for one year. Based upon their input, several amendments are recommended along with editorial changes.

The Notice of Drafting was published in the *State Register* on July 28, 2000.

Section by Section Discussion

- 43-243.1A Addresses general provisions for evaluation.
- 43-243.1B Addresses the eligibility criteria for a Preschool Child with a Disability.
- 43-243.1C Addresses the eligibility criteria for Mental Disability.
- 43-243.1D Addresses the eligibility criteria for Specific Learning Disability.
- 43-243.1E Addresses the eligibility criteria for Emotional Disability.
- 43-243.1F Addresses the eligibility criteria for Speech or Language Impairment.
- 43-243.1G Addresses the eligibility criteria for Deafness and Hearing Impairment.
- 43-243.1H Addresses the eligibility criteria for Visual Impairment.
- 43-243.1I Addresses the eligibility criteria for Deafblindness.
- 43-243.1J Addresses the eligibility criteria for Orthopedic Impairment.
- 43-243.1K Addresses the eligibility criteria for Other Health Impairment.
- 43-243.1L Addresses the eligibility criteria for Traumatic Brain Injury.
- 43-243.1M Addresses the eligibility criteria for Autism.
- 43-243.1N Addresses the eligibility criteria for Multiple Disabilities.
- 43-243.1O Addresses the requirements for reevaluation in all categories of disability.

Instructions:

Amend and replace in its entirety Regulation 43-243.1, Special Education of All Handicapped Children (new title: Special Education, Education of Students with Disabilities) in Chapter 43 of Regulations and amend Article 19, Table of Contents.

Text:

43-243.1, Special Education, Education of Students with Disabilities (new title: Criteria for Entry into Programs of Special Education for Students with Disabilities)

A. General Requirements

These criteria for entry into programs of special education for students with disabilities will be used by all members of the multidisciplinary team, who may include school psychologists, speech-language therapists, and other persons responsible for the identification and evaluation of students with disabilities. The federal definitions for all categories of disabilities have been used, as included in the Individuals with Disabilities Act (IDEA), with one exception. The definition from the S. C. Code Ann. (Supp. 2000) was utilized for a Preschool Child with a Disability. All examiners, however, must be appropriately credentialed or licensed and should have completed training that is directly relevant to the assessment procedure being conducted. Examiners may administer supplementary measures such as curriculum-based assessments to gain additional information.

The categories of educable mental disability, trainable mental disability, and profound mental disability have been

merged into one category called Amental disability≅ (MD), in line with the federal definition of the term. This incorporation has been done solely for the purposes of evaluation and initial service identification and will not affect the programming decisions that will be made for these students through the individualized education program (IEP) team. Placement of all students must be determined by the IEP team.

All evaluation procedures must ensure that the following minimal requirements are met:

1. Tests and other evaluation materials used to assess a student suspected of having a disability are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the student=s native language or other mode of communication unless it is clearly unfeasible to use that language or any mode of communication.

2. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student=s English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child to participate in appropriate activities) that may assist in determining whether the student is one with a disability and what the content of the student=s IEP should be.

4. Any standardized tests that are given to a student have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, must be included in the evaluation report.

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

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

7. No single procedure is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the student.

8. The student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In the assessment of each student with a disability, the methods of evaluation are sufficiently comprehensive to identify all of the student=s special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability.

10. Each school district/agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

11. Each school district/agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

30 FINAL REGULATIONS

B. Preschool Child with a Disability

1. Definition

A Preschool Child with a Disability means a child ages three, four, or five whose developmental progress is delayed to the extent that a program of special education is required to ensure his/her adequate preparation for school-age experiences.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a teacher or other specialist with knowledge in early childhood education may determine that a preschool child has a disability and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies one or more of the following:

a. The child's score on a standardized norm-referenced test is either

(1) at least two standard deviations below the mean in one or more of the following areas: cognition, communication, motor, and/or activities of daily living; or

(2) at least two or more standard deviations discrepant from the mean in a maladaptive direction in the area of social/emotional development.

b. The child's score on a standardized norm-referenced test is either

(1) at least one and one-half standard deviations below the mean in two or more of the following areas: cognition, communication, motor, and/or activities of daily living; or

(2) at least one and one-half standard deviations discrepant from the mean in a maladaptive direction in the area of social/emotional development.

c. The child meets specified state eligibility criteria for any of the following disabilities:

(1) speech or language impairment,

(2) orthopedic impairment,

(3) visual impairment,

(4) deafness and hearing impairment,

(5) other health impairment,

(6) deafblindness,

(7) autism,

(8) traumatic brain injury, or

(9) multiple disabilities.

3. Evaluation

The following evaluation components are required for children who do not meet one or more of the criteria specified in item 2c, above:

- a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.
- b. A developmental history, of the child that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.
- c. Documentation of a structured observation of the child in a typical or otherwise appropriate setting (wherever the child spends the majority of his or her day) by a member of the multidisciplinary evaluation team. If speech is the only disability, a pragmatics assessment must be conducted.
- d. A comprehensive developmental evaluation conducted by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist and by other appropriate professionals, as needed, utilizing norm-referenced measures. The comprehensive developmental evaluation shall include measures in the areas of cognition, communication, motor skills, activities of daily living, and social/emotional maturity administered within the past twelve months.

C. Mental Disability

1. Definition

Mental Disability means mental retardation which is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

2. Eligibility Criteria

a. A multidisciplinary evaluation team may determine that the student has a mental disability and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies all of the following:

(1) Significantly subaverage intellectual functioning must be evidenced by scores on both verbal and nonverbal scales at least two standard deviations (+/- the standard error of measurement) below the mean on one or more individually administered intelligence test(s). Assessments must include measures of both verbal and nonverbal intelligence as appropriate for the individual student. When profile score(s) are inconsistent with significant subaverage performance, then supplementary measures of intellectual functioning must be administered.

When either verbal or nonverbal measures are deemed inappropriate due to the sensory, motor, language, or other conditions of the student, alternative procedures for obtaining a measure of intellectual functioning shall be used. The evaluator shall provide, through a written report, the nature of the substitution made as well as the rationale for invalidating the verbal or nonverbal measure.

(2) Functional limitation in adaptive skill areas as evidenced by composite scores at least two standard deviations (+/- the standard error of measurement) below the mean on a comprehensive standardized adaptive behavior measure.

32 FINAL REGULATIONS

(3) Limitations in preacademic, academic and/or functional academic skills is evidenced by significantly subaverage results on one or more individually administered achievement tests or significantly subaverage results on a developmental skills assessment.

(4) The student=s mental disability adversely affects his or her educational performance.

b. The following score ranges must be utilized in reporting a child with a mental disability under the South Carolina Education Finance Act:

Intellectual Standard Score*

mild	48B70∇
moderate	25B48∇
evere	0B25∇

*assumes mean of 100 and standard deviation of 15.

For funding purposes only, under the South Carolina Education Finance Act, students falling within the mild category are reported as EMH (educable mentally handicapped), and students falling within the moderate and severe categories are reported as TMH (trainable mentally handicapped).

3. Evaluation

The following evaluation components are required:

- a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.
- b. A developmental history, of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.
- c. One or more individually administered full scale norm-referenced measures of intelligence with appropriate reliability, validity, and standardization characteristics administered within the past twelve months by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of the results of a full scale norm-referenced measure-of verbal and nonverbal intelligence, that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district. This instrument must have appropriate reliability, validity, and standardization characteristics and must have been administered within the past twelve months.
- d. A curriculum-based, criterion-referenced, or norm-referenced measure of preacademic, academic, and/or functional academic achievement or a developmental skills assessment individually administered by a trained examiner within the past six months.
- e. A standardized measure of adaptive behavior obtained within the past twelve months from the parent or primary caretaker (or by another individual who is knowledgeable of the student, if the parent or primary caretaker is unable to provide sufficient information to complete the adaptive behavior assessment).
- f. Documentation of the evidence that the student=s mental disability adversely affects his or her educational performance.

D. Specific Learning Disability

1. Definition

Specific Learning disability means a disorder in one of more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has a specific learning disability and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies all of the following:

- a. The student has been provided with learning experiences appropriate for age and ability levels.
- b. The student exhibits a severe discrepancy between achievement and intellectual ability that adversely affects his or her educational performance in one or more of the following areas:
 - (1) oral expression,
 - (2) listening comprehension,
 - (3) written expression,
 - (4) basic reading skills,
 - (5) reading comprehension,
 - (6) mathematics calculation, and/or
 - (7) mathematics reasoning.
- c. The severe discrepancy between ability and achievement has been determined through the use of a discrepancy formula approved by the State Department of Education.
- d. The severe discrepancy between ability and achievement is not primarily the result of
 - (1) vision, hearing, or orthopedic impairment
 - (2) mental retardation;
 - (3) emotional disturbance; or
 - (4) environmental, cultural, or economic disadvantage.

3. Evaluation

34 FINAL REGULATIONS

The following evaluation components are required:

- a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.
- b. Documentation of consistently applied interventions and results aimed at remediating the specific educational deficits within the past twelve months.
- c. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.
- d. One or more individually administered full scale norm-referenced measures of verbal and nonverbal intelligence with appropriate reliability validity, and standardization characteristics administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist within the past twelve months. A report of the results of a full scale norm-referenced measure of verbal and nonverbal intelligence that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents, may be accepted by the school district. This instrument must have appropriate reliability validity, and standardization characteristics and must have been administered within the past twelve months.
- e. Documentation of at least one observation of the student performing in the area(s) of suspected disability by a member of the evaluation team other than the referring teacher within the past twelve months.
- f. A norm-referenced measure of achievement in all areas of suspected disabilities listed in item 2b above, that has been individually administered within the past six months.
- g. Documentation of the evidence that the student=s learning disability adversely affects his or her educational performance.

E. Emotional Disability

1. Definition

Emotional Disability means an emotional disturbance defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student=s educational performance:

- a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c. inappropriate types of behavior or feelings in normal circumstances;
- d. a general pervasive mood of unhappiness or depression;
- e. a tendency to develop physical symptoms or fears associated with personal or school problems.

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.

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has an emotional disability and is eligible for special education and related services, if appropriate, if the evaluation information collected across from multiple sources verifies the existence of certain specific circumstances all of the following:

- a. The student is rated within the highest level of significance on a valid and reliable problem behavior rating scale (or similarly named subscale) by both a certified teacher and another adult knowledgeable of the student.
- b. The student=s observable school and/or classroom problem behavior is documented as 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.
- c. The student=s problem behavior has existed for a minimum of four consecutive months, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.
- d. Documentation exists that specifically prescribed and consistently employed interventions have not resulted in significant improvement in the student=s problem behavior. A certified staff member such as a special education teacher, guidance counselor or certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist with expertise in behavior management has provided consultation to the classroom teacher(s) or other appropriate staff members for a minimum of four weeks through the development of a written behavioral intervention plan. This four-week consultation period may be shortened if the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others.
- e. The student=s score falls within the highest level of significance on a valid and reliable personality measure (if the administration of a personality measure has been deemed developmentally appropriate), or there exists a significant discrepancy between the observed behavior and the student=s performance on the personality measure.
- f. The student=s emotional disability adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months.
- b. A developmental history, of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caretaker.
- c. Anecdotal records collected over a period of at least ten school days within a period of thirty calendar days.
- d. Documentation that the problem behavior has existed for at least four months or that the behavior seriously endangers the student=s life or seriously endangers the safety of others.
- e. Documentation that the consultation provided by a certified staff member with expertise in behavior management resulted in an intervention plan that was implemented for a minimum of four weeks within the past twelve months.
- f. Three direct observations, in at least two different settings, both of which may be school settings, by a certified school psychologist, a licensed school psychologist or a licensed psycho-educational specialist, and/or an observer with expertise in behavior management that provide evidence that the problem behavior occurs at a significantly different rate, intensity, or duration than in a substantial majority of typical school peers.

36 FINAL REGULATIONS

g. Behavior rating scales completed by a certified teacher and another adult knowledgeable of the student and interpreted in consultation with a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist.

h. A valid and reliable personality measure, when developmentally appropriate, administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of a valid and reliable personality measure, when developmentally appropriate, that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district.

i. An individually administered norm-referenced measure of general intelligence with appropriate reliability validity, and standardization characteristics administered within the past twelve months by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A report of the results of an individually administered norm-referenced measure of general intelligence that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district. This instrument must have appropriate reliability, validity, and standardization characteristics and must have been administered within the past twelve months.

j. An individually administered norm-referenced measure of academic achievement obtained within the past six months.

k. Documentation of the evidence that the student=s emotional disability adversely affects his or her educational performance.

F. Speech or Language Impairment

1. Definition

Speech or Language Impairment means a communication disorder such as stuttering, impaired articulation, a language impairment or a voice impairment that adversely affects a student=s educational performance.

2. Eligibility Criteria

A multidisciplinary evaluation team-that includes a speech-language therapist may determine that the student has a speech or language impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources:

a. The student demonstrates at least one of the following impairments:

(1) articulation impairment evidenced by either

(a) single or multiple production errors on a developmental scale of articulation competency,

(b) misarticulations that interfere with communication and attract adverse attention, or

(c) reduced intelligibility due to a phonological disorder or an inability to use the speech mechanism appropriately due to a motor speech disorder such as apraxia or dysarthria;

(2) language impairment evidenced by:

(a) scores of at least one and one-half standard deviations below the mean for that assess the components of language *and either*

(b) inappropriate, inadequate, or limited expressive or receptive language as measured by criterion-referenced testing *or*

(c) scores of at least one and one-half standard deviations below the mean for chronological age or developmental age on one or more standardized tests that assess language processing *or*

(d) limited ability to process language as evidenced by criterion-referenced testing, curriculum-based assessment, or structured classroom observations;

(3) stuttering or disorders of fluency evidenced by either

(a) excessive or atypical dysfluencies for the student=s age, gender, or speaking situation, with or without his or her awareness of the dysfluencies, or

(b) the presence of secondary stuttering characteristics or avoidance behaviors;

(4) voice impairment evidenced by atypical voice quality, pitch, intensity, or resonance that

(a) draws unfavorable attention,

(b) interferes with communication,

(c) is inappropriate for age, gender, or culture, or

(d) adversely affects the speaker or listener; and

b. The student=s speech or language impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. documentation of hearing, vision and speech-language screening conducted within the past twelve months;

b. developmental history, which of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;

c. documentation of an oral peripheral examination conducted by a certified or licensed speech-language therapist;

d. Documentation of an evaluation conducted by a certified or licensed speech-language therapist of the suspected impairment(s) as indicated by screening results:

(1) for a student who fails the articulation portion of the speech screening:

(a) an articulation measure of single-word utterances,

(b) a conversational articulation measure, and

38 FINAL REGULATIONS

(c) a phonological analysis, if needed;

(2) for a student who fails the language portion of the speech screening:

(a) a measure of receptive and expressive language proficiency that includes evaluation in semantics, syntax, and morphology,

(b) an assessment of social/pragmatic language functioning,

(c) a language sample, if appropriate, and

(d) a measure of language processing skills, if appropriate;

(3) for a student who fails the fluency portion of the speech screening:

(a) an assessment of the frequency of dysfluencies,

(b) an assessment of the type of dysfluencies,

(c) a description of the child's fluency patterns in another setting, and

(d) a description of the student's secondary characteristics, if appropriate;

(4) for a student who fails the voice portion of the speech screening:

(a) clearance from a medical doctor that the evaluation can take place and

(b) completion of a vocal characteristics checklist, a description of the student's vocal quality, intensity, resonance, and pitch;

(5) for a preschool child: completion of a pragmatics assessment; and

e. Documentation of the evidence that the student's speech or language impairment adversely affects his or her educational performance.

G. Deaf and Hard of Hearing

1. Definitions

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 student's educational performance.

Hard of Hearing means a hearing loss, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deaf in this section.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a certified teacher of students with hearing loss and/or a certified or

licensed speech-language therapist may determine that the student has a hearing loss and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources the following:

- a. The degree of hearing loss, as determined by a licensed audiologist/otolaryngologist, is 20 dB or greater, either unilaterally or bilaterally, or the student has a fluctuating hearing loss, either unilaterally or bilaterally, as evidenced by a medical history (provided by a physician, preferably an otolaryngologist) of chronic middle ear disease.
- b. The student's hearing loss adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening information conducted within the last twelve months. The hearing screening requirement is waived if the audiological evaluation or medical history report meets criteria specified in items c and d below.

b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

c. A written report of an audiological evaluation conducted within the past twelve months by a licensed or certified audiologist/otolaryngologist that includes

- (1) pure tone air and bone conduction thresholds,
- (2) speech reception thresholds or speech detection thresholds,
- (3) word recognition testing in quiet and amid noise,
- (4) tympanometry, including reflex testing when appropriate, and
- (5) aided pure tone speech results, when appropriate.

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.

d. In instances where a fluctuating hearing loss is suspected, a medical history obtained from a licensed physician (preferably an otolaryngologist) documenting chronic middle ear disease.

e. A norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months.

f. An assessment of receptive and expressive communication skills in the student's preferred mode.

g. Documentation of the evidence that the student's hearing loss adversely affects his or her educational performance.

A student whose primary disability is being deaf or hard of hearing impairment may also exhibit characteristics of a concomitant disability that adversely affects his or her educational progress. Evaluation in the areas of suspected disability must also be conducted in the student's preferred mode of communication by individuals with knowledge of the educational needs of students with hearing loss.

40 FINAL REGULATIONS

H. Visual Impairment

1. Definition

Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes a teacher certified in visual impairment or other professionals knowledgeable of the educational needs of students with visual impairments may determine that the student has the disability of visual impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies the existence of certain specific circumstances. The following criteria must be met:

a. One of the following:

(1) The visual acuity, as determined by a licensed optometrist or ophthalmologist, with correction is 20/70 or worse in the better eye.

(2) The visual acuity, as determined by a licensed optometrist or ophthalmologist, 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 20 degrees or less.

(3) 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.

(4) The existence of cortical visual impairment in the student has been diagnosed by a licensed optometrist, ophthalmologist, or neurologist.

b. The student's visual impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months. The vision screening requirement is waived if a vision examination report meeting criterion specified in item c below is furnished.

b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and current medical history obtained from a parent or primary caregiver.

c. A written report of a visual examination conducted within the past twelve months by a licensed ophthalmologist or optometrist. For diagnosed cortical visual impairment, the examination may be conducted by a neurologist.

d. A functional vision assessment conducted by a teacher certified in the area of visual impairment, a credentialed orientation and mobility specialist, or a trained diagnostician.

e. An assessment conducted by a teacher certified in visual impairment to determine appropriate literacy media and to evaluate braille skills.

f. A norm-referenced or criterion-referenced measure of academic achievement, or a developmental assessment, or an assessment of vision specific skills individually administered within the past six months.

g. Documentation of the evidence that the student=s visual impairment adversely affects his or her educational performance.

Students whose primary disability is visual impairment may also exhibit characteristics of a concomitant disability that adversely affects their educational progress. When these students are not making reasonable progress, further evaluation in the areas of suspected disability must be conducted.

I. Deafblindness

1. Definition

Deafblindness 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 hearing or children with blindness.

2. Eligibility Criteria

A multidisciplinary evaluation team that includes certified instructional personnel or other professional knowledgeable of the educational needs of students with deafblindness may determine that the student is deafblind and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies the following:

a. The student has a visual impairment as evidenced by one the following:

(1) The visual acuity, as determined by a licensed optometrist or ophthalmologist, with correction is 20/70 or worse in the better eye.

(2) The visual acuity, as determined by a licensed optometrist or ophthalmologist, is better than 20/70 with correction in the better eye, and either one of the following conditions: a diagnosed progressive loss of vision or a visual field of 20 degrees or less.

(3) 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

(4) The existence of cortical visual impairment in the student has been diagnosed by a licensed optometrist, ophthalmologist, or neurologist.

b. The student has a hearing loss as evidenced by either

(1) a hearing loss of greater than 20 dB, either unilaterally or bilaterally, as determined by a licensed audiologist/otolaryngologist or

(2) a fluctuating hearing loss, either unilaterally or bilaterally, as evidenced in the results of an audiological evaluation and in a medical history of chronic middle ear disease that is provided by a physician, preferably one who is an ear, nose, and throat specialist.

42 FINAL REGULATIONS

- c. The student=s deafblindness adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. Documentation of vision, hearing, and speech-language screening conducted within the past twelve months. The requirement for vision and hearing screening is waived if a written report of visual and/or audiological evaluation that meet criterion c, f, or g below is furnished.

- b. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and current medical history obtained from a parent or primary caregiver.

- c. A written report of a visual examination conducted within the past twelve months by a licensed ophthalmologist or optometrist. For a diagnosed cortical visual impairment, the examination may be conducted by a neurologist.

- d. A functional vision assessment conducted by a teacher certified in the area of visual impairment, a credentialed orientation and mobility specialist, or trained diagnostician.

- e. An assessment conducted by a teacher certified in visual impairment to determine appropriate literacy media and to evaluate braille skills.

- f. A written report of an audiological evaluation conducted within the past twelve months by a licensed or certified audiologist/otolaryngologist that includes

- (1) pure tone air and bone conduction thresholds,
- (2) speech reception thresholds or speech detection thresholds,
- (3) word recognition testing in quiet and amid noise,
- (4) tympanometry, including reflex testing when appropriate, and
- (5) aided pure tone speech results, when appropriate.

- (6) If the student does not respond to all aspects of the audiological evaluation specified above, other appropriate measuresXin consultation with an audiologist/otolaryngologist must be utilized.

- g. In instances where a fluctuating hearing loss is suspected, a medical history obtained from a licensed physician (preferably an otolaryngologist) documenting chronic middle ear disease.

- h. An individually administered criterion-referenced measure of academic achievement or a developmental or ecological assessment.

- i. An assessment of receptive and expressive communication skills in the student=s preferred mode.

- j. Documentation of the evidence that the student=s deafblindness adversely affects his or her educational performance.

J. Orthopedic Impairment

1. Definition

Orthopedic Impairment means a severe orthopedic impairment that adversely affects a student=s educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absences 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. Eligibility Criteria

A multidisciplinary evaluation team that includes an individual knowledgeable of orthopedic impairment may determine that the student has the disability of orthopedic impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

- a. The existence of an orthopedic impairment in the student has been diagnosed by a licensed physician.
- b. There is documented evidence that student=s orthopedic impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. documentation of vision, hearing, and speech-language screening conducted within the past twelve months;
- b. developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;
- c. record of observation of at least thirty minutes in the classroom or in student=s daily setting conducted by a member of the evaluation team who is knowledgeable of orthopedic impairments;
- d. a written report of a medical examination conducted within the past twelve months by a licensed physician that provides a diagnosis and description of the student=s current physical status;
- e. a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months; and
- f. documentation of the evidence that the student=s orthopedic impairment adversely affects his or her educational performance.

K. Other Health Impairment

1. Definition

Other Health Impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and adversely affects a student=s educational performance.

44 FINAL REGULATIONS

2. Eligibility Criteria

A multidisciplinary evaluation team that includes an individual knowledgeable of other health impairments may determine that the student has the disability of other health impairment and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

- a. The existence of a health impairment in the student has been diagnosed by a licensed physician.
- b. There is documented evidence that student=s health impairment adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

- a. documentation of vision, hearing, and speech-language screening conducted within the past twelve months;
- b. a developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver;
- c. record of observation of at least thirty minutes in the classroom or in student=s daily setting conducted by a member of the evaluation team who is knowledgeable a of health impairments;
- d. a written report of a medical examination conducted within the past twelve months by a licensed physician that provides a diagnosis and description of the student=s current health status;
- e. a norm-referenced or criterion-referenced measure of academic achievement or developmental assessment individually administered within the past six months; and
- f. Documentation of the evidence that the student=s Aother health impairment≅ adversely affects his or her educational performance.

I. 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 student=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. Eligibility Criteria

A multidisciplinary evaluation team shall include a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist in addition to a speech-language therapist knowledgeable in the education of students with traumatic brain injury.

This multidisciplinary team may determine that the student has a disability of traumatic brain injury and is eligible for special education and related services, if appropriate, if the evaluation information collected from multiple sources verifies:

a. The existence of traumatic brain injury has been diagnosed by a licensed physician. Or, in the absence of an existing medical diagnosis or a prior diagnosis of a traumatic brain injury, both of the following are furnished:

(1) a documented history that evidences trauma to the head resulting in impairments according to the definition of the term Atraumatic brain injury≡ (see above) and

(2) a cognitive profile that is consistent with the head injury.

b. The injury has resulted in partial or total functional disability and/or psychosocial impairments.

c. The student=s traumatic brain injury adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Medical records, if available.

b. Documentation of vision, hearing, and speech-language screening conducted after the injury and within the past twelve months.

c. Review of the developmental history or education records of the student to determine effect on his or her educational performance and psychosocial functioning. Particular attention should be paid to the student=s progress prior to and following the suspected injury.

d. Observations in three environments by an observer, other than classroom teacher, that record the nature and severity of the student=s learning and/or behavior difficulties. These may include anecdotal records from previous caregivers; a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist; or the parent(s).

e. Assessment of the student=s language processing and use (not receptive or expressive vocabulary tests), memory, attention, reasoning, abstract thinking, judgment, problem-solving skills, auditory perception, and visual perception shall be completed by two professionalsXa speech-language therapist and either a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist who are knowledgeable of traumatic brain injury.

f. Documentation of the student=s physical functioning that includes motor abilities, sensory functions, and the status of seizure activity, medication, and health.

f. A behavior assessment shall include psychosocial, pre-injury functioning and adjustments to impairments.

h. Documentation of the evidence that the student=s traumatic brain injury adversely affects his or her educational performance.

M. Autism

46 FINAL REGULATIONS

1. Definition

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's education performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in the section on emotional disability.

2. Eligibility Criteria

The multidisciplinary evaluation team must include a specialist knowledgeable in the education of students with suspected autism; a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist; and a speech-language therapist.

a. This multidisciplinary team may determine that a student has autism and is eligible for special education and related services, if appropriate, if the evaluation information collected across multiple settings and from multiple sources verifies that the student exhibits four of the five following indicators:

- (1) present or previous disturbances in developmental rates and/or sequences;
- (2) present or previous disturbances in responses to sensory stimuli;
- (3) impaired or unusual comprehension and/or use of, speech, language, and communication;
- (4) impaired abilities to relate to people, objects, or events; and
- (5) exhibits a significant rating on a standardized autism rating scale.

b. The student's autism adversely affects his or her educational performance.

3. Evaluation

The following evaluation components are required:

a. Hearing and vision screenings conducted within the past twelve months. If there is difficulty in obtaining valid results, placement should proceed based on available information until valid results can be obtained.

b. A speech and language assessment of functional communication administered by a speech-language pathologist within the past twelve months.

c. A developmental history of the student that includes a summary of his or her demographic, developmental, educational, and medical history obtained from a parent or primary caregiver.

d. At least three twenty-minute direct behavioral observations of the student in at least two environments on at least two different days by more than one member of the multidisciplinary evaluation team that records the nature and severity of the student's learning and/or behavioral difficulties. (An observation in the home is strongly encouraged.)

e. A standardized autism rating scale completed by an adult knowledgeable of the student and interpreted in consultation with a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist.

f. Other information related to the student's suspected disability must be obtained when the multidisciplinary team determines that the above requirements do not adequately assess the child's current functional level. If a standardized individual measure of intelligence is determined to be a helpful component of the evaluation process, the test must be administered by a certified school psychologist, a licensed school psychologist, or a licensed psycho-educational specialist. A school district may accept a standardized individual measure of intelligence that has been directly administered within the past twelve months by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents, if a standardized individual measure of intelligence is determined to be a helpful component of the evaluation process. An assessment of academic achievement through the use of standardized tests or curriculum-based procedures may also be conducted. An adaptive behavior scale may be useful in describing the student's current level of functioning for program planning and placement decision.

g. Documentation of the evidence that the student's autism adversely affects his or her educational performance.

N. Multiple Disabilities

1. Definition

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

2. Eligibility Criteria

A multidisciplinary evaluation team may determine that the student has multiple disabilities and is eligible for special education and related services, if appropriate, if the student

a. Meets all eligibility requirements for two or more disabilities. Neither of the two disabilities shall be speech or language impairment. The term does not include deafblindness.

b. The student's learning needs are so complex that a single disability cannot be identified as primary.

3. Evaluation

Evaluation components for at least two suspected disability areas shall be completed.

O. Reevaluation

Reevaluations for all categories of disability must be conducted at least once every three years and must be conducted more frequently if conditions warrant, if the parents or school personnel request such reevaluations, or if the student's dismissal from special education is being considered.

1. This reevaluation must be planned and conducted by an IEP team and other qualified professionals as appropriate.

2. The IEP team must review existing evaluation data on the student, including evaluations and information provided by his or her parents, current classroom-based assessments, and observations of teachers and related service providers.

3. On the basis of that review and input from the student's parents, the IEP team must identify what additional data, if any, are needed to determine the following:

a. whether the student continues to have a disability;

48 FINAL REGULATIONS

- b. what the present levels of performance and the educational needs of the student are;
- c. whether the student continues to need special education and related services; and
- d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set forth in his or her IEP and to participate, as appropriate, in the general curriculum.

4. Appropriate, qualified professionals must administer such tests and/or collect other evaluation information to produce the data identified by the IEP team.

5. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed, the team must document the justification for this determination.

Fiscal Impact Statement:

It is estimated there will be no increased costs to the State or its political subdivisions.

Document No. 2604
BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C. Code Ann. § 59-5-60 (1990), S.C. Code Ann. § 59-18-320(B) (Supp. 2000), S.C. Code Ann. § 59-21-510 *et seq.* (1990 & Supp. 2000), S.C. Code Ann. § 59-30-15 (1990 & Supp. 2000), S.C. Code Ann. § 59-33-10 *et seq.* (1990 & Supp. 2000), S.C. Code Ann. § 59-36-10 *et seq.* (Supp. 2000), S.C. Code Ann. § 59-40-140(C) (Supp. 2000), 20 U.S.C. Section 1232(g) *et seq.* (1996), 20 U.S.C. Section 1400 *et seq.* (1997)

43-243. Special Education, Education of All Handicapped Children (new title: Special Education, Education of Students with Disabilities)

Synopsis:

The State Department of Education proposes to amend and replace in its entirety Regulation 43-243, Special Education of All Handicapped Children (new title: Special Education, Education of Students with Disabilities).

In 1997, the federal government reauthorized the Individuals with Disabilities Education Act (IDEA). In 1999, following the reauthorization of IDEA, the United States Department of Education, Office of Special Education Programs, substantially revised the federal regulations implementing the IDEA. As a result of the reauthorization of IDEA and the revised federal regulations, the State is required to substantially amend its existing regulations in order to meet federal requirements regarding the provision of a free and appropriate education to students with disabilities.

Preliminary Fiscal Impact Statement:

It is estimated there will be increased costs of \$1,600.00 to the State or its political subdivisions.

Instructions:

Amend and replace in its entirety Regulation 43-243, Special Education of All Handicapped Children (new title: Special

Education, Education of Students with Disabilities) in Chapter 43 of Regulations and amend Article 19, Table of Contents.

Text:

43-243, Special Education, Education of All Handicapped Children (new title: Special Education, Education of Students with Disabilities)

A. Purpose

These revised regulations have been developed in order to implement the requirements of the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA).

B. Definitions

1. The term Assistive technology device means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology service includes

a. evaluating the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;

b. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities;

c. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

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

e. providing training or technical assistance to a student with a disability or, if it is appropriate, the family of that student; and

f. providing training or technical assistance to professionals, including individuals who render educational or rehabilitation services to a student with a disability, the employer of a student with a disability, individuals who provide other services to a student with a disability, and individuals who are otherwise substantially involved in the major life functions of such a student.

2. The term At no cost means that all specially designed instruction is provided without charge, but this does not preclude incidental fees that are normally charged to students without disabilities or their parents as part of the general education program.

3. The term A child with a disability means a child who has been evaluated in accordance with the standards set forth in the *Criteria for Entry into Programs of Special Education for Students with Disabilities*, and in State Board Regulation 43-243.1, and Part B of the IDEA as having one of the thirteen categories of disabilities and who, by reason thereof, needs special education and related services.

4. The term A complaint means a written communication supported by documented evidence and registered by an

50 FINAL REGULATIONS

identifiable individual or organization, including an individual or organization from another state, involving a specific alleged violation of the requirements of Part B of the IDEA, the laws of South Carolina governing the education of students with disabilities, or State Board of Education regulations. The term *Acomplaint*≡ should not be confused with requests for information.

5. The term *Aconsent*≡ means that

a. The parent has been fully informed, either in his or her native language or in another mode of communication, of all information relevant to the activity for which consent is sought.

b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists what records, if any, shall be released and to whom.

c. The parent understands that the granting of consent is voluntary on his or her part and may be revoked at any time.

d. If a parent revokes consent, the revocation is not retroactive. For example, if a parent wishes to revoke consent for placement, he or she will need to request an IEP (individualized education program) review. If the IEP team does not agree with the parent, he or she may need to request mediation or a due process hearing.

6. The federal definitions of controlled substance, illegal drug, and weapon included in the IDEA as used in these regulations are as follows:

a. The term *Acontrolled substance*≡ means a drug or other substance identified under schedules I, II, III, IV, and V in Section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c)).

b. The term *Aillegal drug*≡ means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed and used under any other authority under the Controlled Substances Act or under any other provision of federal law.

c. The term *Aweapon*≡ has the definition of *Adangerous weapon*≡ in Section 930(g)(2) of Title 18 of the U.S. Code: *AThe term >dangerous weapon=* means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 22 inches in length.≡

7. The term *Aday*≡ means a calendar day, unless otherwise indicated as *Aschool day*≡ or *Abusiness day*≡

8. The term *Aextended school year services*≡ (*AESY services*≡) means special education and related services that are provided to a student with a disability beyond the normal school year of the school district/agency in accordance with the student's IEP, that are provided at no cost to the parent of the student, and that meet the standards of the State Department of Education. The determination of eligibility for ESY services must be made during the IEP meeting. The need for ESY program/services must be addressed on all students' IEPs and must be made available, as appropriate, to meet the individual needs of all students with disabilities. ESY services must be provided only if a student's IEP team determines on an individual basis that the services are necessary for the provision of a free appropriate public education (FAPE) to the student. The school district/agency must not limit ESY services to particular categories of disabilities or unilaterally limit the type, amount, or duration of those services. The IEP team must review all appropriate data related to progress toward identified critical goals and objectives.

9. The term *Aevaluation*≡ refers to procedures used in accordance with the standards set forth in the *Criteria for Entry into Programs of Special Education for Students with Disabilities* and in State Board Regulation 43-243.1 to determine if a

student meets the criteria for eligibility for special education and related services.

10. The term *expedited hearing* means that timelines must be utilized to result in a decision being made within twenty-five calendar days of the request for the hearing, unless the parents and school officials agree otherwise. In no instance, however, may an expedited due process hearing result in a written decision being mailed to the parties more than forty-five calendar days from the school district's/agency's receipt of the request for the hearing, without exceptions or extensions. At least two business days prior to an expedited hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluation that the party intends to use at the hearing. All parties have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least two business days before the hearing. These timelines must be the same for hearings requested by parents and by school districts. These timelines are different from those established for impartial due process hearings that are not expedited. The decisions from expedited due process hearings are appealable consistent with the information in the sections of these regulations titled *Administrative Appeals/Impartial Review* and *Civil Action*.

11. The term *expedited evaluation* means that timelines must be utilized to achieve the completion of the evaluation within twenty-five calendar days of the parental permission to evaluate. Parental permission for an expedited evaluation must be obtained immediately upon request.

12. The term *free appropriate public education* (FAPE) refers to special education and related services that

- a. are provided at public expense, under public supervision and direction, and without charge;
- b. meet the standards of the State Department of Education;
- c. include preschool, elementary school, and secondary school education in the State; and
- d. are provided in conformity with an IEP that meets all state and federal requirements.

13. The phrase *full explanation of procedural safeguards* (listing of parental rights) means, at minimum, a full explanation of the following procedural safeguards and the state complaint procedures including

- a. independent educational evaluation,
- b. prior written notice,
- c. parental consent,
- d. access to educational records,
- e. the opportunity to initiate due process hearings,
- f. the student's placement during pendency of due process proceeding,
- g. procedures for students who are subject to placement in an interim alternative educational setting,
- h. requirements for unilateral placement by parents of students with disabilities in private schools at public expense,
- i. mediation,
- j. due process hearings, including requirements for disclosure of evaluation results and recommendations,

52 FINAL REGULATIONS

- k. state-level appeals,
- l. civil actions,
- m. attorneys' fees, and
- n. the state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

14. The term *Guardian* means a private individual who has been given the legal custody of a child. If a child is represented by a guardian, no surrogate parent is needed.

15. The term *Individualized education program* or *IEP* means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with these regulations.

16. The term *Individualized education program (IEP) team* refers to a group of individuals, as described in the section of these regulations titled *Individualized Education Programs*, who are responsible for developing, reviewing, and revising an IEP for a student with a disability.

17. The term *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district/agency responsible for the education of the student. *Public expense*, when referring to an independent educational evaluation, means that the school district/agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

18. The term *Meeting* means a prearranged event in which school district/agency personnel come together at the same time, either in person or through conference calls, or other methods of communication, to discuss any matter related to the identification, evaluation, educational placement, and the provision of a FAPE relating to an individual student with a disability. The term does not include informal or unscheduled conversations involving school district/agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the student's IEP. The term also does not include preparatory activities that school district/agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. Parents must be invited to be present at all meetings where any decision is to be made about their child.

19. The term *Native language*, if used with reference to an individual of limited English proficiency, refers to the language normally used by that individual or, in the case of a student, the language normally used by the parents of the child. In all direct contact with a student (including evaluation of him or her), communication must be in the language normally used by the student in the home or learning environment. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

20. The term *Parent* means a parent, a guardian, a person acting as the parent of a child, or a surrogate parent who has been appointed in accordance with the section of these regulations titled *Surrogate Parents* in the procedural safeguards section. The term does not include the State if the child is a ward of the State. The term *Parent* includes persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

The term *Foster parent* means an individual assigned by certain state or local agencies to serve as the custodian for a student. A foster parent may act as a parent (1) if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and (2) if the foster parent has an ongoing, long-term parental

relationship with the student, is willing to make the educational decisions required of parents under state and federal law, and has no interest that would conflict with the interests of the student.

21. The term Anotification≡ means a written statement in the primary language of the home and oral communication in the primary language of the home, unless it is clearly unfeasible to use that language.

22. The term Aparticipating agency≡ means a state or local agency other than the public agency responsible for a student=s education that is financially and legally responsible for providing transition services to a student.

23. The term Apendency≡ refers to the period of time during which some or all matters at issue in a proceeding are still ongoing and no final decisions have yet been made. In this interim period, the rule of what is called AStay Put≡ is in effect:

a. During the pendency of an administrative or judicial proceeding for matters other than dangerousness, weapons, or drugs, the student must remain in the present educational placement, unless all parties agree otherwise, except as indicated in paragraph c of this section.

b. During the pendency of an administrative or judicial proceeding for matters involving dangerousness, weapons, or drugs, the student must remain in the interim alternative education setting pending the decision in the matter or until the expiration of the time period for the removal, unless the parties agree otherwise.

c. If the decision of a state review officer or state review official in an administrative appeal agrees with the student=s parent that a change of placement is appropriate, the placement must be treated as an agreement between the school district/agency and the parent. The student must be placed in the educational setting requested by the parent during the remaining pendency of the proceedings. Upon completion of this process (after the exhaustion of all appeals or upon the abandonment of any further appeals), the student must be placed in the educational setting ordered by the last due process hearing officer or review official, unless otherwise agreed upon.

d. When the proceedings involve initial admission to public school, the student must be placed in the public school program, with the consent of the parents, until completion of all the proceedings.

24. The term Apersonally identifiable≡ refers to information that includes

a. the name of the student and the student=s parent or other family member;

b. the address of the student;

c. a personal identifier, such as the student=s social security number or student number; or

d. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

25. The term Aphysical education≡ means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

26. The term Arelated services≡ means transportation and such developmental, corrective, and other supportive services as are required to enable a student with a disability to benefit from special education. The term also includes

a. speech-language pathology and audiology services,

54 FINAL REGULATIONS

- b. psychological services,
- c. physical and occupational therapy,
- d. recreation (including therapeutic recreation),
- e. early identification and assessment of disabilities in children,
- f. counseling services (including rehabilitation counseling),
- g. orientation and mobility services,
- h. medical services for diagnostic or evaluation purposes,
- i. school health services,
- j. social work services in schools, and
- k. parent counseling and training.

27. The term *Aspecial education*≡ means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including

- a. instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;
- b. instruction in physical education;
- c. speech-language services;
- d. travel training; and
- e. vocational education (career and technical education).

28. The term *Aspecially designed instruction*≡ means adapting, as appropriate to the needs of a child who needs special education and related services, the content, methodology, or delivery of instruction

- a. to address the unique needs of the child that result from his or her disability and
- b. to ensure access of the child to the general curriculum so that he or she can meet the educational standards that apply to all children within the jurisdiction of the school district/agency.

29. The term *Asupplementary aids and services*≡ means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students with disabilities to be educated along with nondisabled students to the maximum extent appropriate. Supplementary services include, but are not limited to, the following: itinerant or resource assistance, sign language interpreting, tutoring, consultation, note taking, assistive technology services, and training for general educators. Supplementary aids include, but are not limited to, the following: large-print textbooks, auditory trainers, curriculum adaptations, classroom modifications, adaptations, time management, behavior management, augmentative communication, and assistive technology devices.

30. The term *Asurrogate parent*≡ means a person appointed to act in place of parents when a student=s parents or guardians cannot be identified or cannot be located or when the student is a ward of the State. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student and to

the provision of a free and appropriate public education (FAPE) to the student.

31. In accordance with the regulations under Part B of the IDEA, the term *substantial evidence* means a preponderance of the evidence.

32. The term *transition services* means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. This coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and must include

- a. instruction,
- b. related services,
- c. community experiences,
- d. the development of employment and other postschool adult-living objectives, and
- e. if appropriate, acquisition of daily-living skills and functional vocational evaluation.

Transition services for students with disabilities may be classified as special education if the services are provided as specially designed instruction, or the transition services may be classified as related services if they are required to enable a student with a disability to benefit from special education.

33. The term *travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to

- a. develop an awareness of the environment in which they live and
- b. learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, home, work, and community).

34. The term *Award of the State* means those students who are in the legal custody of the South Carolina Department of Social Services. In accordance with S.C. Code Ann. § 20-7-490(23) (Supp. 2000), the term *legal custody* means the right to the physical custody, care, and control of a child; the right to determine where the student shall live; and the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care.

C. Free Appropriate Public Education (FAPE)

1. Purpose

All students with disabilities ages three through twenty-one who are residents of the State, including students who have been suspended or expelled from school, shall be provided with a FAPE, including special education and related services.

2. Responsibility of State Department of Education (SDE)

a. The provision of special education and related services for children with disabilities ages three through twenty-one shall be the responsibility of the SDE and the school districts. Additional vehicles of service delivery shall include state agencies, institutions, and other participating organizations. The SDE shall be responsible for assuring that the requirements

56 FINAL REGULATIONS

of Part B of the IDEA are carried out and that all educational programs for students with disabilities within the State, including all such programs administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs for students with disabilities in the SDE and shall meet education standards of the SDE.

b. A FAPE shall be accorded to all students with disabilities through school districts/agencies, including students with disabilities who are placed by school districts in private schools. To ensure the implementation of a FAPE, policies and procedures must be submitted to the SDE for approval. Following review and approval of these policies and procedures, the SDE shall monitor school districts/agencies to ensure compliance with the provisions of the IDEA. The primary delivery system of a FAPE is through the school district. All school districts must identify and provide appropriate special education programs available to all students with disabilities within their jurisdiction. Students with disabilities who have been unilaterally placed in private schools by their parents, however, do not have an individual entitlement to a FAPE. Requirements for private school students are included in the section of these regulations titled *Private Schools*. Enforcement of these requirements is through the SDE and through content and approval of school district applications for entitlements under the IDEA.

c. An IEP must be in effect no later than the child's third birthday. This responsibility includes providing a FAPE for students with disabilities in foster homes, group homes, orphanages, or state-operated health facilities, including facilities for the treatment of mental illness or chemical dependence located within the jurisdiction of the school district.

d. In the event that a third party places a student with a disability in a residential setting for purposes other than education, the SDE shall approve the educational program prior to such a placement. Therefore, prior to any state agency's placing a student with a disability in any setting, the educational program must be approved in advance by the SDE.

e. All private schools and private residential schools serving students with disabilities placed there by a school district/agency must comply with SDE standards, as well as all educational programs under the authority of a state agency.

3. FAPE for Students Suspended or Expelled from School

a. School district/agencies are not required to provide special education or related services during periods of removals or suspensions for a student with a disability who has been removed or suspended from his or her current placement for ten cumulative school days or less in a given school year if services are not provided to a student without disabilities who has been similarly removed.

b. If the school district/agency continues to impose removals or suspensions for a student who has already been removed or suspended from his or her current placement for ten cumulative school days during the school year, the school district/agency must ensure that services are provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

(1) School personnel, in consultation with the special education teacher, must determine the extent to which services are necessary if the removal or suspension is for less than ten consecutive school days and does not constitute a change of placement as described in the section of these regulations titled *Procedural Safeguards*.

(2) The student's IEP team must determine the extent to which services are necessary if the student is removed by school personnel to an interim alternative educational setting for up to forty-five calendar days for weapons or drugs or by a due process hearing officer based on a determination of dangerousness or a substantial likelihood of injury.

(3) The student's IEP team must determine the extent to which services are necessary if the student is expelled for behavior determined not to be a manifestation of the student's disability.

(4) The student=s IEP team must determine the extent to which services are necessary if the parent agrees to a change in placement for the student because of his or her behavior.

(5) The services must include interventions and modifications to address the behavior and must be designed to prevent the behavior from recurring.

4. Students Advancing from Grade to Grade

a. A FAPE is available to any individual student with a disability who needs special education and related services, even though the student is advancing from grade to grade.

b. The determination that a student is eligible for special education and related services must be made on an individual basis by the group responsible within the student=s school district/agency (IEP team and other qualified professionals, as appropriate) for making those determinations.

5. Highly Mobile Students

A FAPE must be made available to highly mobile students with disabilities, such as migrant and homeless students.

6. Exceptions to the FAPE

a. It is not required that special education and related services be provided to a student with a disability who, in the last educational placement prior to his or her incarceration in an adult correctional facility, was not actually identified as being a student with a disability and did not have an IEP.

b. There is no obligation to provide a FAPE to students with disabilities who have graduated from high school with a regular high school diploma. Graduation from high school with a regular diploma constitutes a change in placement requiring prior written notice.

c. Students who have graduated but have not been awarded a regular high school diploma are still entitled to receive a FAPE.

7. Proper Functioning of Hearing Aids

Each school district/agency must ensure that the hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

8. Full Educational Opportunity Goal

Each school district/agency must establish and implement a goal of providing full educational opportunity to all students with disabilities in the area served by the school district/agency.

9. Program Options

Each school district/agency must take steps to ensure that its students with disabilities have available to them the variety of educational programs and services that are available to nondisabled students in the area served by the school district/agency, including art, music, industrial arts, consumer and homemaking education, and occupational education.

10. Nonacademic Services

a. Each school district/agency must take steps to provide nonacademic and extracurricular services and activities in

58 FINAL REGULATIONS

the manner necessary to afford to students with disabilities an equal opportunity for participation in those services and activities.

b. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district/agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district/agency and assistance in making outside employment available.

11. Physical Education

a. General

Physical education services, specially designed if necessary, must be made available to every student with a disability receiving a FAPE.

b. Regular Physical Education

Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless he or she

(1) is enrolled full time in a separate facility or

(2) needs specially designed physical education as prescribed in the student=s IEP.

c. Special Physical Education

If specially designed physical education is prescribed in a student=s IEP, the school district/agency responsible for the education of that student shall provide the services directly or shall make arrangements for those services to be provided through other public or private programs.

d. Education in Separate Facilities

The school district/agency responsible for the education of a student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services as described above.

12. Students with Disabilities in Public Charter Schools

a. Students with disabilities who attend public charter schools and their parents retain all rights extended under these regulations.

b. The school district is responsible for ensuring that the requirements of these regulations are met with respect to students with disabilities enrolled in any charter school that is a part of the district. The school district must have information on file with the SDE to demonstrate that in carrying out these regulations with respect to charter schools, the school district will serve students with disabilities attending those schools in the same manner that it serves students with disabilities in its other schools and will provide funds under Part B of the IDEA to those schools in the same manner that it provides those funds to its other schools.

13. Extended School Year Services

Each school district/agency must ensure that extended school year services are available as necessary to provide a

FAPE. These services must be provided only if a student=s IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student in accordance with the section of these regulations titled AIndividualized Education Programs.=

14. Transition Services

Each school district/agency must ensure that transition services that promote movement from school to postschool activities are available as necessary to provide a FAPE in accordance with the section of these regulations titled AIndividualized Education Programs.=

15. Assistive Technology

Each school district/agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in section B, part 1, ADefinitions,= are available as necessary to provide a FAPE to students with disabilities.

16. Residential Placement

If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.

17. No Delay in Implementing a Student=s IEP

There must be no delay in implementing a student=s IEP, including any case in which the source that will provide or pay for special education and related services to the student is being determined.

D. Child Find

1. All students with disabilities residing in the StateXincluding students with disabilities who are attending private schools and religious schools, regardless of the severity of their disability, and who are in need of special education and related servicesXmust be located, identified, and evaluated. These requirements apply to highly mobile students with disabilities, such as migrant and homeless students, and students suspected of having disabilities and of being in need of special education, even though they are advancing from grade to grade.

2. In the event that a student thought to have a disability has been placed in another agency without having undergone identification and evaluation procedures in a school district/agency, then the agency is required to meet the evaluation requirements imposed on school districts/agencies through the *Criteria for Program Entry into Programs of Special Education for Students with Disabilities* and State Board Regulation 43-243.1.

3. Training on procedures regarding child identification shall be provided to all school districts/agencies. Technical assistance shall be provided upon request or when deemed necessary on the basis of complaints, results of monitoring, and the like, to school districts/agencies needing additional training or support.

4. The SDE shall monitor child identification initiatives. Each school district=s/agency=s policies and procedures shall be reviewed to determine that they are in compliance with both federal and state statutes and regulations.

60 FINAL REGULATIONS

5. Child Find for Children from Birth through Age Two

A cooperative interagency agreement with the Department of Health and Environmental Control (lead agency under federal law for children ages birth through two years) shall specify the roles and responsibilities of the participating agencies (BabyNet) relative to children with disabilities who are two years old and under.

E. Evaluation and Determination of Eligibility

1. Initial Evaluation

Each school district/agency must conduct a full and individual initial evaluation before the initial provision of special education and related services to a student with a disability. (Specific regulations are included in the *Criteria for Program Entry into Programs of Special Education for Students with Disabilities* and in State Board Regulation 43-243.1.)

2. Evaluation Procedures

Each school district/agency must ensure that the following requirements, at a minimum, are met:

a. Tests and other evaluation materials used to assess a student suspected of having a disability are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the student's native language or other mode of communication unless it is clearly unfeasible to use that language or any mode of communication.

b. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that, rather than measuring the student's English language skills, they measure the extent to which the student has a disability and needs special education.

c. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child to participate in appropriate activities) that may assist in determining whether the student is one with a disability and what the content of the student's IEP should be.

d. Any standardized tests that are given to a student have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, must be included in the evaluation report.

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

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

g. No single procedure is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the student.

h. The student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

i. In the assessment of each student with a disability, the methods of evaluation are sufficiently comprehensive to identify all of the student=s special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability.

j. Each school district/agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

k. Each school district/agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

3. Determination of Needed Evaluation Data

a. Review of Existing Evaluation Data

(1) As part of an initial evaluation, if appropriate, and as part of any reevaluation, a group that includes the individuals representing the membership of an IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and observations by teachers and related-services providers;

(2) On the basis of that review, additional data needed, if any, must be identified to determine whether the student has a particular category of disability. In the reevaluation of a student, the determination must be made as to whether the student continues to have a disability. The following must also be determined:

(a) what the present levels of performance and educational needs of the student are,

(b) whether the student needs special education and related services or, in the reevaluation of a student, whether the student continues to need special education and related services, and

(c) whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in his or her IEP and to participate, as appropriate, in the general curriculum.

b. Conduct of Review

The review described in the previous paragraph may be conducted without a meeting.

c. Need for Additional Data

Each school district/agency must administer tests and other evaluation materials as are needed to produce the data identified in this section of these regulations.

d. Requirements If Additional Data Are Not Needed

If the determination is made that no additional data are needed to determine whether the student continues to be one with a disability, the school district/agency must notify the student=s parents of that determination and the reasons for it. The parents must also be notified of their right to request an assessment to determine whether, for purposes of special education services, their child continues to have a disability. The school district/agency is not required to conduct the

62 FINAL REGULATIONS

assessment unless requested to do so by the student=s parents in order to determine if the student continues to have a disability.

4. Determination of Eligibility

a. Upon the completion of the tests and the other evaluation materials, a group representing the membership of an IEP team must determine whether the student has a disability as defined in section B, part 3, ADefinitions.≡ The school district/agency must provide the student=s parents with a copy of the evaluation report and the documentation of determination of eligibility.

b. A student must not be determined to be eligible for special education and related services if the determining factor for that eligibility is a lack of instruction in reading or math or a limited English proficiency and the student does not otherwise meet the eligibility criteria included in the *Criteria for Program Entry into Programs of Special Education for Students with Disabilities* and in State Board Regulation 43-243.1.

c. Each school district/agency must reevaluate a student with a disability in accordance with Part B of the IDEA before determining that he or she can no longer be considered to have a disability. This reevaluation is not required before the termination of a student=s eligibility under Part B of the IDEA due to his or her having graduated with a regular high school diploma or having exceeded the age of eligibility for a FAPE under state law.

5. Procedures for Determining Eligibility and Placement

a. In interpreting evaluation data for the purpose of determining if a student is one with a disability under Part B of the IDEA and the educational needs of the student, each school district/agency must draw on information from a variety of sources, including, as appropriate, aptitude and achievement tests; parent input; teacher recommendations; and the student=s physical condition, social and/or cultural background, and adaptive behavior. The information obtained from all of these sources must be documented and carefully considered.

b. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for him or her in accordance with Part B of the IDEA and the requirements in the section of these regulations titled AIndividualized Education Programs.≡

6. Reevaluation

A reevaluation of each student, in accordance with the section of these regulations titled AEvaluation and Determination of Eligibility,≡ must be conducted if conditions warrant a reevaluation or if the student=s parents or teacher requests a reevaluation. In any event, a review must be conducted at least once every three years.

7. Additional Procedures for Evaluating Students with Specific Learning Disabilities

a. Procedures for evaluating students with specific learning disabilities are included in the *Criteria for Program Entry into Programs of Special Education for Students with Disabilities* and in State Board Regulation 43-243.1. Additionally, a written report must be developed for a student suspected of having a specific learning disability and must include the following:

- (1) the determination as to whether or not the student has a specific learning disability;
- (2) an explanation of the basis on which the determination was made;
- (3) the relevant behavior noted during the observation of the student;

(4) the relationship of that behavior to the student's academic functioning;

(5) the educationally relevant medical findings, if any;

(6) a statement as to whether there is a severe discrepancy between the student's ability and level of achievement that is not correctable without special education and related services; and

(7) the determination concerning the effects of environmental, cultural, or economic disadvantage on the student.

b. Each team member must certify in writing whether the report reflects his or her conclusions with respect to all of the factors in the above list. If the report does not reflect his or her conclusions, the team member must submit a separate statement presenting his or her specific points of disagreement.

F. Confidentiality of Personally Identifiable Information

1. Definitions

The following definitions apply to the terms used in this section of these regulations:

a. **ADestruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

b. **AEducation records** means the type of records covered under the definition of **Aeducation records** in the Family Educational Rights and Privacy Act (FERPA) of 1974 and implementing regulations in the Code of Federal Regulations (34 C.F.R. Part 99).

c. **AParticipating agency** means any agency or institution that collects, maintains, or uses personally identifiable information or that provides the information required under Part B of the IDEA.

2. Notice to Parents

The SDE shall provide notice that is adequate to fully inform parents about the confidentiality of personally identifiable requirements of Part B of the IDEA, including

a. a description of the extent to which the notice is given in the native languages of the various population groups in the State;

b. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;

c. a summary of the policies and procedures that participating agencies must follow regarding the storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

d. a description of all of the rights of parents and students regarding this information, including the rights under the FERPA.

Before any major identification, location, or evaluation activity is conducted, the notice must be published or

64 FINAL REGULATIONS

announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

3. Access Rights

Parents are guaranteed full and free access to information regarding their children that is collected and maintained by the SDE, school districts, and other participating agencies.

a. Parents have the right to inspect and review any education records relating to their children that are collected, maintained, or used by the school district/agency.

b. Parents have the right to receive a response from the school district/agency to reasonable requests for explanations or interpretations of information pertaining to their children. The school district/agency must comply with this request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student and in no case more than forty-five days after their request is made.

c. Parents have the right to request that the school district/agency provide copies of the records containing the information if failure to provide those copies would effectively prevent them from exercising their parental right to inspect and review the records.

d. Parents have the right to have their representative inspect and review records pertaining to their child, subject to their providing written authorization to the school district/agency. (The provision of copies of records to representatives of parents is not mandatory unless failure to provide those copies would effectively prevent the parents from exercising their parental right to inspect and review the records.)

e. A school district/agency may presume that both parents have authority to inspect and review records relating to their child unless the school district/agency has been advised that a parent does not have the authority under applicable state law governing matters such as guardianship, separation, or divorce.

4. Records on More Than One Student

Parents have the right to inspect and review only the information relating to their child. If any educational record includes information on more than one student, that specific information must be deleted prior to disclosure.

5. List of Types and Locations of Information

Parents have the right to receive, upon specific request, a list of the types and locations of education records collected, maintained, or used by the school district/agency.

6. Fees

The SDE, school district, or other participating agencies may charge a reasonable fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those copies. A school district/agency must not charge a fee to search for or to retrieve the requested information.

7. Amendment of Records at Parents' Request

Parents have the right to request appropriate amendments to information in educational records collected, maintained, or used that they believe is inaccurate or misleading or violates the privacy or other rights. Procedures must be established in school districts/agencies to ensure the parents' right to challenge the information that the parents feel is

inaccurate or misleading or violates the privacy or other rights of a student. These procedures shall include the following:

a. Parents must submit a formal written request (or in certain cases a request in other modes of communication) for appropriate amendments to information to the district superintendent or his or her designee.

b. The school district/agency must notify the parents within a reasonable amount of time, not to exceed forty-five calendar days of the disposition of the request. When the parents' request is granted, the appropriate amendments must be made. When the request is denied, parents must be informed of their right to request a hearing.

8. Opportunity for a Hearing

Parents must submit a formal written request (or in certain cases a request in other modes of communication) for a hearing to the district superintendent or his or her designee to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. Impartial due process hearing officers procured by the school district/agency must conduct the hearings. Only persons trained by the SDE may conduct hearings for the school district/agency. Persons who have formerly been employed by the school district/agency are not eligible. The qualifications for impartial due process hearing officers are specified in the section of these regulations titled, *Impartial Due Process Hearing Officers* in the procedural safeguards section.

9. Result of Hearing

a. When the decision of the due process hearing officer is that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the appropriate amendments must be made and the school district/agency must inform the parents in writing.

b. When the decision of the due process hearing officer is that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district/agency must inform the parents of their right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for their disagreeing with the decision of the agency.

c. The statement/explanation must be placed in the records of the student and maintained as long as the record or contested portion is maintained by the school district/agency. Disclosure of the contested portion of the records to authorized persons must also include a copy of the parents' statement/explanation.

10. Hearing Procedures

The following are requirements for the SDE and school districts/agencies:

a. An impartial due process hearing officer must conduct the hearing.

b. Parents have the right during the hearing to present evidence relevant to the issues. The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including legal counsel.

c. The decision must be based solely on the basis of the evidence and the testimony presented at the hearing.

d. Within five calendar days after the hearing, the due process hearing officer must notify all parties in writing of the decision.

e. The notification by the due process hearing officer must include a summary of the evidence and the reasons for the decision.

66 FINAL REGULATIONS

11. Consent

The SDE or school district/agency may not release information from educational records to participating agencies without parental consent except as allowed under the FERPA. Parental consent must be obtained prior to the disclosure of information to anyone other than officials of participating agencies and the use of information for purposes other than those designated. In the event that parental permission cannot be obtained, the school district/agency may invoke hearing procedures prior to disclosure or use of information in other participating agencies.

12. State and Local Access to Information

Personally identifiable information may be disclosed (transmitted) between the SDE and school districts without written consent of the parents or the majority-age student, provided the purpose of the action is related to legitimate educational interests. Legitimate educational interests may include, but are not necessarily limited to, the following:

- a. identification or evaluation of students with suspected disabilities,
- b. referral or placement of students with disabilities,
- c. investigation of complaints, and
- d. other aspects related to the provision of a FAPE.

13. Information Disclosed between School Districts

Personally identifiable information may be disclosed (transmitted) between school districts without the written consent of the parents when the student transfers from one school system to another. The school district transferring records must notify the parents at their last known address, except when the transfer of records is initiated by parents or when the school district includes a provision in its policies or procedures that educational records are forwarded upon request of the school in which the student seeks to enroll.

14. Information Disclosed Where Permission Is Required

Parental permission must be obtained prior to the disclosure (transmission) of personally identifiable information regarding a student between a school district and a participating agency, except in emergency situations as outlined in the FERPA.

15. Information Disclosed Where Permission Is Not Required

Personally identifiable information may be disclosed (transmitted) from other participating agencies to the SDE without the written consent of parents. Personally identifiable information may be disclosed (transmitted) from the SDE to other participating agencies consistent with the conditions set forth in the FERPA.

16. Safeguards

The SDE and school districts/agencies must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the SDE and school districts/agencies must be designated as the responsible person for ensuring the confidentiality of personally identifiable information. Training or instruction regarding state policies and procedures must be provided to persons collecting or using personally identifiable information. The SDE and each school district/agency must maintain a list of names and positions of those employees having access to personally identifiable information for public inspection.

17. Destruction of Information

a. A school district/agency must inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student and must apprise them of their right to have this information destroyed. Personally identifiable information maintained on students with disabilities may be retained permanently unless the parents request that it be destroyed. Personally identifiable information no longer needed must be destroyed at the request of parents except that the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

b. Forty-five calendar days prior to destruction of any personally identifiable information, the parents must be notified that they have the right to request and be provided a copy of the information that has been obtained or used for the specified purposes.

18. Student=s Rights

a. All rights of the parents must be transferred to the student upon his or her reaching the age of majority (eighteen years old). Prior to the student=s reaching the age of majority, the school district/agency must designate a person to explain orally to the student his or her rights under the IDEA at the IEP team meeting before the student turns eighteen. The school district/agency must provide notice to the parents and the student regarding the transfer of rights. The school district/agency must provide any notice required under the IDEA to both the parent and the student. All rights of the parents under the IDEA, including rights to educational records, transfer to those students who are incarcerated in an adult or juvenile, state or local, correctional institution.

b. If the student has been determined to be incompetent in accordance with state laws, if the parent obtains a power of attorney, or if the student signs a waiver provided by the school district/agency stating the parent may continue to be accorded all rights under IDEA, the rights shall not be transferred. The student may, however, revoke the power of attorney or the waiver at any time.

c. If the student has been determined to be incompetent in accordance with state laws and requires legal guardianship beyond his or her reaching the age of majority, the legal guardian shall maintain the rights to privacy. Parents who retain their rights under the IDEA through a power of attorney or by having the student sign a waiver must also continue to maintain the student=s rights to privacy.

d. It shall not be the prerogative of a student aged eighteen or older to deny his or her parents access to the student records if the student is dependent on the parents as defined in Section 152 of the Internal Revenue Code of 1954 (over half of his or her financial support during the calendar year is furnished by the parents).

19. Enforcement

Ongoing enforcement activities include the IDEA school district=s/agency=s application approval, compliance monitoring, and an investigation of alleged violations directed to the SDE through the complaint system described in the section titled AProcedural Safeguards≡ in these regulations. A statement of compliance with SDE policies is a condition of contractual relationships between the SDE and the participating agencies. These policies shall pertain to vendored services/programs subcontracted by participating agencies.

20. Disciplinary Information

School districts/agencies must follow the procedures established by each school district/agency regarding the inclusion in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the student with a disability. This may only be transmitted to other school districts/agencies to the same extent

68 FINAL REGULATIONS

that it is transmitted for students without disabilities. If this statement is transmitted, it may include a description of any behavior by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with him or her. If the disciplinary records are transmitted, the transmission of the student=s records must include the student=s current IEP.

G. Individualized Education Programs (IEP)

1. Responsibility of the State Education Agency

The SDE shall ensure that each school district/agency that provides special education and related services either directly, by contract, or through other arrangements must develop and implement an IEP for each of its students with disabilities. An IEP must be developed and implemented for each eligible student placed in a private school or facility by the school district/agency. Each school district/agency in the State must maintain records of the IEP for each student with a disability.

2. When IEPs Must Be in Effect

For students currently receiving special education/related services, the IEP must be in effect by the beginning of each school year. All IEPs must be in effect before special education and related services are provided. The term *in effect* means that the IEP has been developed properly (i.e., at a meeting or meetings involving all of the required participants under federal and state regulations). Each school district/agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEPs for students with disabilities. For students initially entering programs of special education/related services, the eligibility determination/IEP development/placement determination meeting must be completed within thirty calendar days of the evaluation procedures.

3. Implementation of IEPs

The IEP must be finalized before placement and be in effect before special education and related services are provided. The IEP must be implemented as soon as possible but not later than seven calendar days following the IEP meeting. The student=s IEP must be accessible to each general education teacher, special education teacher, related-service provider, and other service provider who is responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the student=s IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

4. IEPs for Children Ages Three through Five

All children with disabilities ages three through five must have IEPs that are developed and revised consistent with the requirements in this section of these regulations.

5. Initial IEPs, Provision of Services

The student must be evaluated following the school district=s/agency=s receipt of parent consent to an initial evaluation of that student. If the student is determined to be eligible for services under the IDEA, special education and related services are made available to him or her in accordance with an IEP.

6. Review and Revision of IEPs

Each school district/agency must initiate and conduct meetings periodically to review each student's IEP and, if appropriate, to revise its provisions. A meeting must be held at least once every twelve months to determine whether the

annual goals for the student are being achieved and whether the IEP needs to be revised in any way. This meeting shall address the following:

- a. any lack of expected progress toward the annual goals described in this section of these regulations and in the general curriculum, if appropriate,
- b. the results of any reevaluation conducted under the section of these regulations titled AEvaluation and Determination of Eligibility,≡
- c. information about the student provided to or by the parents as described in the section of these regulations titled AEvaluation and Determination of Eligibility,≡
- d. the student=s anticipated needs, and
- e. any other appropriate matter.

7. IEP Team

Each school district/agency must ensure that the IEP team for each student with a disability includes the following participants:

a. A representative of the school district/agency, other than the student's teacher, who is qualified to provide or to supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, who is knowledgeable about the general curriculum and about the availability of resources of the school district/agency, and who may also be acting in another role as a member of the IEP team as one of the following:

- (1) a district representative/designee who meets state certification requirements for school administrators, supervisors, or special education instructional personnel;
- (2) a principal;
- (3) a special education consultant;
- (4) a school psychologist; or
- (5) a guidance counselor.

b. At least one general education teacher of the student with a disability, if that student is, or may be, participating in the general education environment. As a member of the IEP team for a student with a disability, the general education teacher must, to the extent appropriate, participate in the development, review, and revision of the student=s IEP, including assisting in the determination of suitable positive behavioral interventions and strategies for the student and in the determination of supplementary aids and services, program modifications, or supports for school personnel that must be provided for the student consistent with this section of these regulations.

c. At least one special education teacher who is qualified in the area of the student=s disability or, where appropriate, at least one special education provider of the student. The speech-language therapist is considered to be a student=s teacher and must be in attendance during meetings to develop the IEP for any student who has only a speech-language disability. The speech-language therapist may not serve as both the school district/agency representative and the teacher during the same meeting.

d. The parents of the student with a disability. One or both of the student=s parents, legal guardian, or surrogate

70 FINAL REGULATIONS

parents must be invited to participate in the meeting.

e. The student who is the subject of the meeting, when appropriate. The student must be invited to attend the meeting when the parents determine it is appropriate or when transition needs or services are to be discussed.

f. Other individuals who have knowledge or special expertise regarding the student, including related-services personnel as appropriate, at the discretion of the parent or the school district/agency. The determination of the knowledge or special expertise of any individual is made by the parents or the school district/agency who invited the individual to be a member of the IEP team.

g. An individual who can interpret the instructional implications of evaluation results. This person may also be acting in another role as a member of the IEP team.

h. A representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency that was invited to send a representative to a meeting does not do so, the school district/agency must take other steps to obtain the participation of the other agency in the planning of any transition services.

i. The director of Programs for Career and Technical Education and/or the appropriate career and technical education representative for a student who is fifteen years of age or who is in the ninth grade, whichever has occurred first. This requirement applies for grades nine through twelve, unless career and technical education is determined to be inappropriate during the meeting at the ninth-grade level.

8. Parent Participation

a. Each school district/agency must take steps to ensure that one or both of the parents of a student with a disability are present at each IEP meeting or are afforded the opportunity to participate.

b. At least seven calendar days prior to the meeting, the school district/agency must ensure that a letter is provided to the parents in the primary language of their home and a copy maintained in the student's folder, which must include the following rights/information:

(1) The specific purpose of the IEP meeting.

(2) The time (hour), date, and specific location (school or building) of the IEP meeting.

(3) The names and the specific positions of participants who will be in attendance at the IEP meeting.

(4) A statement of the parents= right to reschedule the meeting at a mutually agreeable time, date, and/or location.

(5) A statement of the parents= right to determine whether their child will be a participant during the scheduled meeting.

(6) A statement that their child will be invited to be a participant in the meeting if transition needs and/or services are to be discussed.

(7) A statement of the parents= right to bring other participants who have knowledge or special expertise regarding the student to the meeting.

(8) A statement of the parents= right to participate as equal members of the student multidisciplinary team.

(9) A statement of the parents= right to request a new IEP meeting any time they feel it is warranted.

(10) A statement that the parents must be provided a copy of their child=s IEP.

(11) A statement of the parents= right to be provided with an interpreter when there is a communication barrier.

(12) A statement that (a) if the student is fourteen years of age or older, or will turn age fourteen during the effective dates of the IEP, the IEP team shall discuss transition service needs, focusing on his or her courses of study, or (b) if the student is sixteen years of age or older, or will turn sixteen during the effective dates of the IEP, the IEP team shall discuss transition services and incorporate a transition services plan into the IEP. Transition services for younger students may also be discussed if the IEP team or the parents deem these services appropriate.

(13) A statement that if transition services are to be discussed, the specific agencies that are likely to be responsible for providing or paying for transition services must be invited to the meeting. These specific agencies must be identified.

c. If neither parent can attend, the school district/agency must use other methods to ensure parent participation, including individual or conference telephone calls.

9. Conducting an IEP Meeting without a Parent in Attendance

a. A meeting may be conducted without a parent in attendance if the school district/agency is unable to convince the parents that they should attend. In this case, the school district/agency must have a record of its attempts to arrange a mutually agreed-upon time and place, such as

(1) detailed records of telephone calls made or attempted and the results of those calls,

(2) copies of any correspondence sent to the parents and any responses received, and

(3) detailed records of visits made to the parents= home or place(s) of employment and the results of those visits.

b. An IEP meeting may be conducted without a parent in attendance only when the parents cannot be convinced that they should attend following a minimum of two attempts to arrange a mutually convenient meeting. If these attempts to gain the parents' participation are not successful, the meeting will be conducted as scheduled.

c. When the parents are not in attendance, within ten calendar days following the meeting a copy of the IEP/LRE (least restrictive environment) forms must be provided to the parents.

d. The school district/agency shall take whatever action is necessary to ensure that the parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

10. Development, Review, and Revision of IEP

a. In developing each student=s IEP, the team must consider the strengths of the student and the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the student, and the results of the student=s performance on any general statewide or districtwide assessments, as appropriate.

b. The IEP team must document the consideration of the following special factors:

72 FINAL REGULATIONS

(1) In the case of a student whose behavior impedes his or her learning or that of others, the team must consider, as appropriate, approaches including positive behavioral interventions, strategies, and supports to address that behavior.

(2) In the case of a student with limited English proficiency, the team must consider the language needs of the student as these needs relate to his or her IEP.

(3) In the case of a student who is blind or visually impaired, the team must provide for instruction in braille and in the use of braille unless the team determines after an evaluation of the student's reading and writing skills, his or her needs with regard to the appropriate reading and writing media, including an evaluation of his or her future need for instruction in braille or the use of braille that instruction in braille or the use of braille is not appropriate for the student.

In accordance with S.C. Code Ann. § 59-34-40 (Supp. 2000), instruction in braille reading and writing must be sufficient to enable each legally blind student to communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level. The student's IEP must specify

(a) the results obtained from the assessment required in Section 59-34-30,

(b) how braille will be implemented as the primary mode for learning through integration with other classroom activities,

(c) the date on which braille instruction will commence,

(d) the length of the period of instruction and the frequency and duration of each instructional session, and

(e) the level of competency in braille reading and writing to be achieved by the end of the period and the objective assessment measures to be used.

If a decision has been made with respect to the assessment that braille instruction or use is not required for the student, then a description of the evidence used to determine that the absence of braille instruction or use will not impair the student's ability to read and write effectively must be included.

(4) The team must consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, must consider the student's language and communication needs, opportunities for the student to have direct communications with peers and professional personnel in his or her language and communication mode, the student's academic level, and the student's full range of needs, including opportunities for direct instruction in his or her language and communication mode.

(5) The team must consider whether the student requires assistive technology devices and services.

c. In conducting a meeting to review and if appropriate revise a student's IEP, the team must consider the factors as stated previously in this section of these regulations. If in considering these factors, the team determines that a student needs a particular device or service including an intervention, accommodation, or other program modification in order for the student to receive a FAPE, the team must include a statement to that effect in the student's IEP.

d. The IEP team is not required to include information under one component of a student's IEP that is already contained under another component.

11. Content of the IEP

A draft IEP that has been labeled as a draft may be prepared by the school district/agency prior to the meeting. It

must be made clear to the parents and other participants that the draft IEP has been prepared for discussion purposes only and may be revised during the meeting. The IEP for each student with a disability must include the following components:

a. The month, day, and year that the IEP will be initiated (beginning date for the IEP services and modifications). Appropriately completed IEPs must be implemented within seven calendar days following the IEP meeting for students initially entering a program of special education or for students whose placement has been changed, except when the meetings occur immediately prior to or during the summer or other vacation periods.

b. The anticipated date (month, day, and year) that the IEP is to be completed.

c. The anticipated date (month, day, and year) of the IEP annual review meeting.

d. The anticipated frequency, location, and duration of the services and modifications included in the IEP.

e. A statement of the present levels of educational performance, including how the student=s disability affects his or her involvement and progress in the general curriculum (i.e., the same curriculum as for students without disabilities) or, for a preschool child as appropriate, how the disability affects his or her participation in appropriate activities.

f. A statement of measurable annual goals, including short-term objectives/benchmarks related to

(1) meeting the student=s needs that result from his or her disability for each annual goal to enable the student to be involved in and progress in the general curriculum (i.e., the same curriculum as for students without disabilities) and

(2) meeting each of the student=s other educational needs that result from his or her disability.

g. A statement explaining the methods by which the student=s progress toward the annual goals will be measured and how the student=s parents will be regularly informedXat least as often as the parents of students without disabilities are informedXregarding the student=s progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

h. The type of physical education (P.E.) to be provided, such as regular P.E. for nondisabled students, modified/adapted P.E. for nondisabled students, specially designed P.E., or P.E. in separate facilities. If the student has completed the requirements for P.E. or is medically exempt from P.E., the IEP team must reflect this fact in the designated space in the IEP. If minor modifications are required in order for the student to be able to participate in the regular P.E. program, these modifications must be described in the IEP. In cases where the student requires specially designed P.E. or P.E. in separate facilities, the program must be addressed in all applicable areas of the IEP, including present levels of performance, annual goals, short-term objectives/benchmarks, and the services to be provided.

i. The type of career and technical education to be provided to the student, such as general career and technical education for nondisabled students, modified/adapted career and technical education for nondisabled students, or specially designed career and technical education. Equal access to the full range of career and technical programs must be provided to students with disabilities in the LRE. Career and technical education programs and activities must be included, whenever appropriate, as a component of the IEP and must be planned through coordination with representatives of career and technical education and special education. Career and technical education must always be addressed in the IEP, even if AN/A≅ is appropriate, for those students who are fifteen years of age or in the ninth grade, whichever has occurred first. If minor modifications are required in order for the student to be able to participate in the general career and technical education program, the modifications must be described in the IEP. In cases where the student requires specially designed career and technical education, the program must be addressed in all applicable areas of the IEP, including present levels of performance, annual goals, short-term objectives/benchmarks, and the services to be provided.

j. A statement of the transition-service needs that focuses on the course of study, such as participation in advanced

74 FINAL REGULATIONS

placement courses or in a career and technical educational program, for each student with a disability who has reached the age of fourteen or who will reach fourteen during the implementation period of the IEP and for a younger student, if it is determined appropriate by the IEP team. This statement must be updated annually. A statement of the needed transition services must be included for each student who has reached the age of sixteen or will reach sixteen during the implementation period of the IEP and for a younger student, if it is determined appropriate by the IEP team. This statement must be updated annually. A statement of the interagency responsibilities or any needed linkages must be included, if appropriate.

k. A statement that the student has been informed of the rights that will transfer to him or her on reaching the age of majority, beginning at least one year before the student reaches the age of eighteen. Also included in the IEP must be a statement explaining that the parents have been informed that the rights will be transferred to the student (unless the probate court has determined the student to be incompetent) but that the parents shall continue to receive required parent notices.

l. A statement that the appropriateness of ESY services has been determined. If ESY program/services are determined to be required, an IEP team must develop an addendum to an IEP that specifies the ESY services. The ESY addendum must include the following components:

(1) the annual goals and short-term objectives/benchmarks from the student's current IEP that will be continued during the extension of the school year;

(2) the type of special education and related services to be provided, the location of these services, the amount of time to be spent in special education, and the projected beginning and ending dates of the extended services; and

(3) the type of transportation to be provided, if necessary.

m. A statement as to whether the student will be subject to the rules/guidelines as outlined in a school's student handbook. Any adaptations that the IEP team has determined necessary must also be explained.

n. A statement as to whether the student will work toward a state-issued diploma or a certificate.

o. A statement that the student must participate in the regular statewide and districtwide testing programs. All students with disabilities are required to participate in the testing program or in an alternate assessment. The IEP team must determine whether the student will participate in statewide alternate assessments based on the participation criteria. Any individual accommodations and/or modifications in the administration of statewide or districtwide assessments of student achievement that are needed in order for the student to participate in the assessment must also be included in the IEP. If the IEP team determines that the student cannot participate in a particular statewide or districtwide student-achievement assessment, a statement of why that assessment is not appropriate for the student and how the student will be assessed must be included in the IEP.

p. A statement as to whether the student requires promotion/retention standards that are different from those that nondisabled students must meet. If alternative promotion/retention standards are necessary, the IEP team must describe the alternative goals and promotion standards that are applicable for the student.

q. A statement of the decisions regarding related services, if appropriate, that have been made during the IEP meeting. The need for related services (e.g., mental health services including psychological counseling, physical therapy, occupational therapy) must be determined by the IEP team. All related services that are needed to enable the student to benefit from special education must be listed in the IEP. These services must be provided at no cost to the student or to his or her parents. Each related service and the amount of time the service must be provided must also be stated in the IEP. Related services must be addressed, even if AN/A \cong or ANone \cong is appropriate. Changes in the amount of time allotted to each service listed in the IEP may be made only through another IEP meeting. Goals, objectives/benchmarks, and present levels of

performance are required for all related services other than routine or maintenance types of related services (e.g., daily minibus transportation), which require descriptions of the service(s) to be provided. Goals, objectives/benchmarks, and present levels of performance are required, however, for all related services involving any type of instructional activity provided to the student (e.g., learning to control his or her behavior on the bus, learning to self-catheterize).

r. A statement describing the specific special education and related services, program modifications/supports, and supplementary aids and services to be provided to the student or on behalf of the student. The IEP must also include a description of the program modifications or supports for school personnel that must be provided to the student to enable him or her to

- (1) advance appropriately toward attaining the annual goals,
- (2) be involved and progress in the general curriculum in accordance with the present levels of educational performance,
- (3) participate in extracurricular and other nonacademic activities, and
- (4) be educated and participate with other students with disabilities and nondisabled students in appropriate activities.

The IEP team must indicate the frequency and location of each supplementary service, program modification/supports, or aid to be provided. The school district/agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability, if required, as a part of his or her special education, related services, or supplementary aids and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive a FAPE.

s. A statement as to the extent (e.g., hours per week, periods per week) to which the student will participate in academic, nonacademic, and extracurricular activities in the general educational environment. The amount of time the student will spend in the special education program must also be stated in the IEP in terms of hours per week or periods per week.

12. Students with Disabilities Convicted as Adults and Incarcerated in Adult Prisons

There is no requirement that a FAPE must be provided to any student between the ages eighteen and twenty-one who, in his or her last educational placement prior to incarceration in an adult correctional facility, did not have an IEP under this section of these regulations. The IEPs of students incarcerated in an adult correctional facility need not relate to the requirements of IDEA relating to participation of students with disabilities in general assessments. The requirements of IDEA relating to transition planning and transition services do not apply to students whose eligibility under these regulations will end because of their age before they are eligible to be released from prison based on consideration of their sentences and eligibility for early release.

The IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

13. Agency Responsibilities for Transition Services

If a participating agency, other than the school district/agency, fails to provide the transition services described in the IEP in accordance with the transition requirements in this section of these regulations, the school district/agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

76 FINAL REGULATIONS

Nothing in this section of these regulations relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

14. Private School Placements by Public Agencies

a. For students with disabilities placed by a school district in a private school, the school districts must conduct meetings to develop the IEPs prior to the provision of special education/related services by the private schools to the students. Before a school district places a student with disabilities in a private school, the school district must initiate and conduct a meeting to develop the IEP prior to the delivery of special education/related services by the private school. The school district must ensure that an appropriate representative from the private school where the student is enrolled participates in the development of the IEP and annual review.

b. After a student with disabilities is placed in a private school by the school district, any meetings to review or revise the student's IEP may be initiated by the private school at the discretion of the school district, provided that the parents and a school district representative are involved in the decision-making process and agree to any proposed changes in the program before these changes are implemented. The responsibility for compliance with these requirements remains with the school district.

c. For a student with disabilities enrolled in a private or parochial school and receiving special education and related services, as appropriate, from a school district, the school district where the student is a legal resident has the responsibility for initiating and conducting meetings to develop, review, and revise the IEP. The school district shall be responsible for ensuring the participation of private school representatives in these meetings.

15. IEPs for Students Transferring from One School District to Another

When a student has transferred from one school district to another, the receiving school district must ensure that special education and related services, as appropriate, are available to the student in conformity with an IEP. An IEP meeting must be conducted to review and revise the student's IEP, as appropriate, as soon as possible but not later than seven calendar days after the parents enroll the student in the receiving school district. The receiving school district must ensure that the student has an IEP in effect before the school district can provide special education and related services. The receiving school district may meet this responsibility either by adopting the IEP the former school district developed for the student or by developing a new IEP for the student. Before the IEP is finalized, the receiving school district may provide interim services agreed to by the parents and by the receiving school district. If the parents and the receiving school district are unable to agree on an interim IEP and placement, the receiving school district must implement the old IEP to the extent possible until a new IEP is developed. There must be no delay in providing a FAPE to the student.

16. IEPs for Students Served in State-Operated Programs

a. When a student with a disability is provided special education and related services by any public agency of the State, an IEP must be in effect before special education and related services are provided.

b. State-operated programs having educational responsibility must develop IEPs for all students with disabilities under their jurisdiction. When a school district initiates placement in a state-operated program having education responsibility and the state-operated program accepts jurisdiction, however, the state-operated program must assume responsibility for the review/revision of the current IEP involving the school district initiating placement.

c. When a student with a disability formerly served by a state-operated program transfers to a school district, the school district is responsible for involving appropriate personnel from the state-operated program for the review/revision of the student's IEP.

d. In those instances where a school district maintains educational responsibility for a student with a disability and contracts with a state-operated program for service delivery, the school district is responsible for the initial development and subsequent reviews of the IEP.

e. When a student with a disability is placed in a state-operated program not having educational responsibility, the IEP must be developed by the student's home school district and must be in effect before special education and related services are provided. The home school district must assume responsibility for subsequent reviews/revisions of the IEP and must involve the state-operated program.

17. IEP Accountability

a. Each school district/agency must provide special education and related services to a student with a disability in accordance with the student's IEP and must make a good faith effort to assist the student to achieve the goals and objectives/benchmarks listed in the IEP.

b. Each school district/agency must provide special education and related services to a student with a disability in accordance with an IEP. The school district/agency, teacher, or other person, however, may not be held accountable if a student does not achieve the growth projected in the annual goals and objectives/benchmarks.

H. Procedural Safeguards

1. The SDE must ensure that each school district/agency establishes, maintains, and implements procedural safeguards that meet the requirements of Part B of the IDEA and the regulations in this section.

a. Opportunity to Examine Records and Parent Participation in Meetings

In accordance with Part B of the IDEA and the requirements in the section of these regulations titled Confidentiality of Personally Identifiable Information, the parents of a child with a disability must be afforded an opportunity to

(1) inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and to the provision of a FAPE for the student and

(2) participate in meetings with respect to the identification, evaluation, and educational placement of the student and to the provision of a FAPE for the student.

b. Parent Participation in Meetings

The school district/agency must provide notice to ensure that parents of students with disabilities have the opportunity to participate in meetings. It shall be the responsibility of the district/agency to

(1) Notify parents of the meeting early enough to ensure that they will have an opportunity to attend (at least seven calendar days prior to the meeting, except in the instance of a notification to an expedited hearing, which must be at least two business days prior to the expedited hearing). A copy of the communication delivered to each parent, legal guardian, or surrogate parent must be maintained in the student's folder.

(2) Notify parents of their right to schedule the meeting at a mutually agreed-upon time and place. The purpose, time (including date and hour), and location of the meeting and the persons who will be in attendance (names and specific positions) must also be included in the notification.

78 FINAL REGULATIONS

c. Parent Involvement in Placement Decisions

(1) The school district/agency must ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district/agency must use other methods to ensure their participation, such as individual or conference telephone calls.

(2) A placement decision may be made by an IEP team without the involvement of the parents if the school district/agency is unable to obtain the parents' participation in this decision. In this case, the school district/agency must have a record of its attempts to ensure parental involvement at a mutually agreed-upon time and place, such as

(a) detailed records of telephone calls made or attempted and the results of those calls;

(b) copies of correspondence sent to the parents and any responses received; and

(c) detailed records of visits made to the parents' home or place(s) of employment and the results of those visits.

d. The school district/agency must take whatever action is necessary to ensure that the parents understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English.

2. Independent Educational Evaluation

a. Parents must be informed of their right to obtain an independent educational evaluation if they disagree with the evaluation obtained by the school district/agency as specified in the full explanation of procedural safeguards (listing of parental rights) included in section B, part 13, ADefinitions. The parents must be provided a list of places to obtain an independent educational evaluation upon request as well as the school district's/agency's criteria for obtaining educational evaluations at public expense.

b. If a due process hearing is held to determine if the school district/agency is responsible for reimbursement of an independent educational evaluation already obtained by the parent, the school district/agency may not be held responsible if it demonstrates that the evaluation does not meet school district/agency criteria. When a parent requests an independent educational evaluation at public expense, the school district/agency must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense.

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

d. If a parent requests an independent educational evaluation, the school district/agency may ask the parent to explain the reason why he or she objects to the school district's/agency's evaluation. An explanation by the parent may not be required, however, and the school district/agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's/agency's evaluation.

e. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the school district/agency in any decision made with respect to the provision of a FAPE for the student and may be presented as evidence at a hearing regarding the student.

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

g. Whenever an independent educational evaluation is obtained at public expense, the criteria under which the evaluation is conducted, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the school district/agency uses when it initiates an evaluation. Other than these criteria, the school district/agency must not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Prior Notice by the School District/Agency and Content of Notice

a. Notice

Written notice that meets the requirements of the following section titled AContent of Notice≡ must be given to the parents of a student with a disability at least seven calendar days before the school district/agency proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. Written notice must also be given to parents if the school district/agency refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. If the notice relates to an action proposed by the school district/agency that also requires parental consent, the notice may be given at the same time parental consent is requested.

b. Content of Notice

The written notice must include the following:

- (1) A description of the action proposed or refused by the school district/agency.
- (2) An explanation of why the school district/agency proposed or refused to take the action.
- (3) A description of any other options considered and reasons why these options were rejected.

(4) A description of each evaluation procedure, test, record, or report the school district/agency used as a basis for the proposal. Procedures include broad areas of assessmentXsuch as physical, language, social, behavioral, emotional, achievement, and intellectual abilitiesXand the types of professionals involved in administering the tests or collecting the information.

(5) Either a full explanation of all procedural safeguards (listing of parental rights) or both of the following:

(a) a statement that the parents of a student with a disability have protection under the procedural safeguards of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained and

(b) a list of sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

c. Notice in Understandable Language

The full explanation of procedural safeguards (listing of parental rights) and all notices to parents of students with disabilities must be

- (1) Written in a language that is understandable to the general public.

80 FINAL REGULATIONS

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly unfeasible to use that language or any mode of communication. If the native language or other mode of communication of the parent is not a written language, the school district/agency must ensure that

(a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication,

(b) the parent understands the content of the notice, and

(c) there is written evidence that the requirements regarding the procedural safeguards notice have been met.

4. Procedural Safeguards Notice

a. A copy of the full explanation of all of the procedural safeguards (listing of parental rights) available to the parents of a student with a disability must be given to the parents at a minimum upon

(1) the initial referral for evaluation,

(2) each notification of an IEP meeting,

(3) reevaluation of the student, and

(4) the receipt by the school district/agency of a request for a due process hearing under the IDEA.

b. The procedural safeguards notice must include a full explanation of all the procedural safeguards specified in the definition of Afull explanation of procedural safeguards≡ (listing of parental rights) in section B, part 13, ADefinitions.≡ This notice must meet the requirements specified in the previous section titled ANotice in Understandable Language.≡

5. Parental Consent

a. Informed parental consent must be obtained before

(1) An initial evaluation or reevaluation can be conducted.

(2) An initial provision of special education and related services to a student with a disability.

(3) A change in placement that is either a change in the category of disability or in the program model and not dismissal from a program of special education. This informed consent need not be obtained, however, if the school district/agency can document that it has taken reasonable measures to obtain consent but the student=s parents have failed to respond. Parents must be provided a minimum of two notifications requesting they sign the permission for change of placement. If the parents do not respond following a minimum of two notifications, the school district/agency may not implement the change of placement for a period of ten days following the second notification.

b. Parental consent is not required before

(1) a review of existing data can be conducted as part of an evaluation or a reevaluation and

(2) a test or other evaluation that is administered to all students, unless consent is required of the parents of all students before administration of that test or evaluation.

c. Prior parental consent for evaluation must be obtained when students are singled out to receive selective screening or evaluation instruments such as formal and standardized assessments beyond mass screening. Procedural safeguards requirements, including provision to parents of a listing of all parental rights, must be implemented at this time. Parental consent is not required for routine mass screening for vision, hearing, and speech, even when used for staffing decisions. Permission for the intervention process is not required, but parents must be given the opportunity to participate in the process. When the intent is that observations completed during the intervention process are to be used in evaluating a student for a program of special education, due process requirements under the IDEA must be implemented.

d. If the parents of a student with a disability refuse consent for initial evaluation or a reevaluation, the school district/agency should determine on a case-by-case basis whether to pursue the evaluation by using the due process hearing procedures or the mediation procedures specified in this document, if appropriate.

e. The school district/agency may not use a parent=s refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the school district/agency, except as stipulated in this document.

6. Mediation

a. Mediation is available to allow parties to resolve disputes when the school district/agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE for a student. Mediation shall be offered whenever a due process hearing is requested.

b. Procedures have been established to ensure that the mediation process is

(1) voluntary on the part of the parties,

(2) not used to deny or delay a parent=s right to a due process hearing or to deny any other rights afforded under federal and state requirements,

(3) conducted by an impartial mediator who has been trained by the SDE in effective mediation techniques and is included on the list maintained by the SDE of persons who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services,

(4) conducted by an impartial mediator who has been selected either on a random basis, a rotational basis, or with both parties involved in selecting the mediator and agreeing with the selection of the individual who will mediate, and

(5) scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

c. The State shall bear the cost of the mediation process by directly paying for the training of all mediators and flowing through IDEA, Part B funds that may be used for all aspects of the mediation process, including the cost of meetings to encourage mediation.

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

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

f. An individual who serves as a mediator must not

82 FINAL REGULATIONS

(1) be an employee of the school district or any state agency that provides a FAPE for students with disabilities
or

(2) have a personal or professional conflict of interest.

g. A person who otherwise qualifies as a mediator is not to be considered an employee of a school district or state agency solely because he or she is paid by the school district/agency to serve as a mediator.

h. A school district/agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party

(1) who is under contract with a parent training and information center or community parent resource center in the State established under the IDEA or an appropriate alternative dispute resolution entity and

(2) who would explain the benefits of the mediation process and encourage the parents to use the process.

These procedures may not be used to deny or delay a parent=s right to a due process hearing or to deny any other rights afforded under federal and state regulations.

7. Due Process Hearings

a. The parents or the school district/agency may initiate a due process hearing if the district/agency should propose to initiate or change any matter relating to the identification, evaluation, or educational placement, or the provision of a FAPE to the child and if the district/agency should refuse to initiate or change any of these circumstances.

b. The hearing must be conducted by the school district/agency that is directly responsible for the education of the student. When a child with a disability is placed in a school district/agency that does not have educational responsibility for him or her and a due process hearing becomes necessary, the hearing is the responsibility of the student=s home school district and must be conducted in accordance with these procedures.

c. When a due process hearing is initiated under this section, the school district/agency must inform the parents of the availability of mediation.

d. When a hearing is initiated, the coordinator of Programs for Children with Disabilities must notify the parents by certified mail, return receipt requested, on the same day that the request for the hearing is submitted to an impartial due process hearing officer. The notice to parents shall contain

(1) a list of agencies/organizations in the community where free/low cost legal and other relevant services may be available to parents who request the information or at any time when either the parents or the school district/agency initiates a due process hearing;

(2) a copy of the original notice requesting permission for the proposed action, as well as a statement as to the reason that the hearing is being requested;

(3) a statement that school files, reports, and records pertaining to the student must be made available for inspection and copying, consistent with the school district=s/agency's procedures concerning confidentiality;

(4) a detailed description of all the rights regarding procedures at the due process hearing;

(5) a statement of the parents= right to appeal the decision resulting from the due process hearing; and

(6) the statement that AIn any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys= fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.≡

e. Funds under the IDEA may not be used to pay attorneys= fees.

f. When parents initiate a hearing on the proposal/refusal to change or to initiate the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student, the parent of a student with a disability or the attorney representing the student must provide notice, which shall remain confidential, to the school district/agency. The notice must include the following:

(1) the name of the student,

(2) the address of the residence of the student,

(3) the name of the school the student is attending,

(4) a description of the student=s problem as it relates to the proposed change or initiation, including the facts surrounding the problem, and

(5) a proposed resolution to the problem to the extent known and available to the parents at the time.

g. A model form developed by the SDE shall be provided to parents to assist them in filing a request for a due process hearing that includes the required information.

h. The school district/agency must not deny or delay a parent=s right to a due process hearing for his or her failure to provide notice that includes the required information.

8. Impartial Due Process Hearing Officers

The school district/agency shall procure persons to serve as impartial due process hearing officers for due process hearings conducted at the local level.

a. Only persons trained by the SDE may conduct hearings for the school district/agency.

b. Persons who have formerly been employed by the school district/agency are not considered eligible.

c. A due process hearing officer will be selected without regard to race, sex, creed, or category of disability.

d. The school district/agency will require each person agreeing to serve as a due process hearing officer to sign a statement verifying that he or she meets the required qualifications:

(1) A due process hearing officer must be at least twenty-one years of age and must hold either a high school diploma or an equivalent credential.

(2) A due process hearing officer must be unbiased toward or against any party involved in the hearing.

(3) A due process hearing officer must have no personal or professional conflict of interest.

(4) A due process hearing officer shall not be an officer, agent, school board official, or employee of the school

84 FINAL REGULATIONS

district/agency that is involved in the education or care of the student. A person who otherwise qualifies to conduct a hearing is not to be considered an employee of the school district/agency solely because he or she is paid by the school district/agency to serve as a due process hearing officer.

e. Each school district/agency must keep a list of the persons who serve as due process hearing officers and must maintain signed statements of their qualifications, in addition to statements of pertinent information such as verification that the person is over the age of twenty-one, the level of education he or she has attained, and the person's current occupation or former occupation if retired.

f. If the parents should raise an objection and provide a reason concerning a potential bias or a personal or professional conflict with regard to the due process hearing officer who has been appointed by the school district/agency, the school district/agency must go to the next name on the list of persons who serve as due process hearing officers for the school district/agency. If the school district/agency has exhausted all of the names on its list and the parents and school district/agency are still unable to reach an agreement regarding the due process hearing officer, then a due process hearing officer will be appointed by the SDE from the supplemental list maintained by the SDE.

9. Hearing Rights

a. Procedures Prior to the Hearing

(1) The school district/agency must submit the request for a due process hearing to an impartial due process hearing officer within ten calendar days after it receives that request, and it must notify the parents of all items specified in the sections of these regulations titled *ADue Process Hearings*,[≡] and *APrior Notice by the School District/Agency and Content of Notice*.[≡]

(2) Within five calendar days after receiving the request for a hearing, the due process hearing officer will notify the parties of the time, date, and location of the hearing. The school district/agency will provide assistance to the due process hearing officer, if necessary, concerning the acquisition of a meeting room and any secretarial assistance needed. The notification will be provided twenty calendar days prior to the scheduled date of the hearing, which will be conducted at a time, date, and location reasonably convenient to the parents and the student involved. The notice shall inform the parties of the following:

(a) their right to be accompanied and advised by counsel and by individuals with special knowledge or training with regard to the problems of students with disabilities;

(b) their right to present evidence, confront, cross-examine, and compel the attendance of witnesses;

(c) their right to prohibit the introduction of any evidence that has not been disclosed to them at least five calendar days prior to the hearing;

(d) their right to obtain a written transcript^Xor, at the option of the parents, an electronic verbatim transcript^Xof the hearing (at no cost to the parents);

(e) their right to obtain a written transcript^Xor, at the option of the parents, an electronic verbatim transcript^Xof the findings of fact and the decisions made at the hearing (at no cost to the parents);

(f) the parents' right to have present the student who is the subject of the hearing; and

(g) the parents' right to open the hearing to the public (otherwise, hearings will be closed).

(3) At least five business days prior to a hearing described in this section, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing. A due process hearing officer may bar any party who fails to comply with this paragraph from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

b. Placement during the Pendency of the Proceedings

(1) The student will remain in his or her present educational placement unless all parties agree otherwise.

(2) If the due process hearing involves the student's initial admission to public school, the student, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(3) If the student is dangerous to him- or herself or to others and the parents do not agree for the student to be removed from the present educational placement, the school district/agency can seek injunctive relief through the courts or through an expedited due process hearing to have the student removed.

(a) If the decision of the due process hearing officer in an expedited due process hearing or the decision of a review official in an administrative appeal agrees with the school district/agency that a change of placement is appropriate, that placement must be treated as an agreement between the school district/agency and the parents and the student must be placed in an interim alternative educational setting.

(b) If the decision of the due process hearing officer in an expedited due process hearing or the decision of a review official in an administrative appeal is in favor of the parent, however, the student shall remain in the present educational placement unless all parties agree otherwise.

c. A due process hearing shall be conducted in accordance with the following requirements:

(1) Within forty-five calendar days after the school district/agency receives a request for or initiates a due process hearing, a final decision must be reached and the parties shall be notified in accordance with the following procedure. The due process hearing officer, however, may grant specific extensions of time requested by all parties beyond the forty-five-day time period.

(2) The due process hearing officer shall have the power to subpoena.

(3) The due process hearing officer shall preside at the hearing and conduct the proceedings in a fair and impartial manner.

(4) All parties involved in the hearing must have an opportunity to present evidence and testimony.

(5) The parent and the school district/agency may have legal counsel and witnesses present at the hearing.

(6) The hearing shall be closed to the public unless the parent requests an open hearing.

(7) The parent and the school district/agency and their respective representatives shall have the right to present evidence and testimony.

(8) The parent and the school district/agency and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

(9) A court reporter shall be available to create an official transcript of the hearing, unless the parties agree in writing that an audiotape of the hearing shall be made instead.

86 FINAL REGULATIONS

(10) Interpreters shall be provided at no cost, as warranted, for parents whose primary language is other than English or who are unable to communicate through normal modalities.

d. Due Process Hearing Officer Decisions

(1) Within five calendar days after the hearing, the due process hearing officer shall issue a decision in accordance with the following requirements:

(a) The decision must be in writing and must be transmitted by certified mail to the parent and to the school district/agency.

(b) The due process hearing officer's decision must include findings of fact and conclusions and must state the reasons for these. The decision shall either approve or disapprove the proposed evaluation, placement, or change in placement, or action in question.

(c) The due process hearing officer must make an independent decision based solely on evidence and testimony presented at the hearing.

(d) The due process hearing officer's decision must include a statement of all parties' right to an appeal to the SDE.

(e) The due process hearing officer's decision must provide notice that includes a statement that if any party disagrees with the decision an SDE appeal/impartial review may be initiated within ten calendar days of receiving notice of the decision.

(f) The due process hearing officer's decision must include a statement that each party has a right to request an extension of time in which to file a request for administrative review.

(g) The decision of the local due process hearing officer is binding on all parties, and any action directed by the due process hearing officer must be initiated immediately unless an appeal is filed.

(2) The school district/agency must transmit the local due process hearing officer's written findings of fact and decisions, after deleting personally identifiable information, to the SDE's Office of Exceptional Children for transmittal to the State Advisory Council on the Education of Individuals with Disabilities. Additionally, these findings and decisions shall be made available to the public. All documentation of the local hearing shall be maintained by the school district/agency.

e. Administrative Appeals/Impartial Review

(1) A request for an appeal to the SDE may be initiated by any party for an impartial review of the decision resulting from a due process hearing at the local level within ten calendar days after the decision is rendered and received.

(2) Any party filing an appeal with the SDE must notify the other parties of the appeal and provide a copy of the appeal, including written arguments, to the other parties.

(3) The state-level administrative reviewing officer has the authority to grant a request for a specific extension of time in which to file a written administrative review request.

(4) A request for an extension of time in which to file an administrative review (beyond the ten-day time limit) must be made in writing to the director of the Office of Exceptional Children, who shall submit such request to the state-

level administrative reviewing officer.

(5) Within ten calendar days of receiving a request for an extension of time for filing an administrative review request, the state-level administrative reviewing officer may grant such a request for good cause shown. The concept of A good cause≡ is not exhaustive; however, it shall not include negligence or a matter of low priority in filing the request for a review.

(6) The state-level administrative reviewing officer may not grant an extension of more than twenty days beyond the original ten-day timeline.

(7) An appeal directed to the SDE must be in written form. If parents are unable to communicate through written notice, the school district/agency must provide assistance in this regard.

(8) An appeal submitted to the SDE must include a written transcript, which the school district/agency must provide at no cost to the parents.

(9) An appeal must include a statement of the local hearing officer=s decision following the hearing conducted at the local level, the specific points being appealed, and copies of all items entered as evidence. If the school district/agency is appealing the decision, the school district/agency must provide the names and addresses of the parents. The party filing the appeal may also include a written argument along with the request for an administrative appeal. When parents appeal the decision of the local due process hearing officer, the school district/agency must provide a copy of the local due process hearing officer=s decision and copies of all items entered as evidence at the local level.

(10) Should the school district/agency appeal the decision of the local due process hearing officer to the SDE=s Office of Exceptional Children, the school district/agency is responsible for ensuring that the required procedures concerning an appeal are carried out. Additionally, the school district/agency must maintain all documentation concerning the appeal.

f. Administrative Review Officer

If there is an appeal from the local due process hearing officer=s decision, the SDE shall conduct an impartial review of the hearing. The official conducting the review must

(1) Examine the entire hearing record.

(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 section H, part 7, ADue Process Hearings,≡ shall apply to the hearing.

(4) Afford the parties an opportunity for oral or written argument, or both, at the due process hearing officer=s discretion. Each review involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved.

(5) Make an independent decision on completion of the review.

(6) Give all parties a written copyXor, at the option of the parents, an electronic copyXof the findings of fact and decisions.

(7) Issue a final decision within thirty calendar days after the SDE receives a request for an appeal and mail a copy of the decision to all parties. However, the state-level administrative reviewing officer mayXat the request of any

88 FINAL REGULATIONS

partyXgrant, for cause, specific extensions of time that result in the issuance of a decision beyond the thirty-day period for administrative appeals/impartial reviews.

g. Finality of Decision/Appeal/Impartial Review

The decision of the administrative review due process hearing officer is binding on all parties, and any action directed by the due process hearing officer shall be initiated immediately unless an appeal is filed.

h. Civil Action

(1) Any party who is aggrieved by the findings and decision of the school district=s/agency=s proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student or is aggrieved by the findings and decision regarding the disciplinary procedures outlined under Part B of the IDEA but who does not have the right to an appeal under the disciplinary procedures of Part B of the IDEA has the right to bring a civil action with respect to the issues presented in the hearing. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) Any party aggrieved by the findings and decision in an appeal of a decision by a local due process hearing officer regarding the school district=s/agency=s proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student has the right to bring a civil action with respect to the complaint presented pursuant to Part B of the IDEA relating to these issues. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(3) In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under Section 615 of Part B of the IDEA relating to procedural safeguards with the respect to the provision of a FAPE by school districts/agencies, without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, and other federal laws protecting the rights of children with disabilities. Before a party files a civil action under these laws seeking relief that is also available under Section 615 of Part B of the IDEA, the procedures for due process hearings and appeals under both the State and federal regulations regarding the school district=s/agency=s proposal/refusal to initiate or change the identification, evaluation, or educational placement of the student, the provision of a FAPE to the student, or the disciplinary procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of Part B of the IDEA.

10. Attorneys= Fees

a. In any action or proceeding brought under Section 615 of Part B of the IDEA (procedural safeguards), the court, in its discretion, may award reasonable attorneys= fees as part of the costs to the parents of a student with a disability who are the prevailing parties. Funds under Part B of the IDEA may not be used to pay attorneys= fees or costs of a party related to an action or proceeding under Section 615 of Part B of the IDEA.

b. A court awards reasonable attorneys= fees under Section 615(i)(3) of Part B of the IDEA consistent with the following:

(1) Fees awarded under the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(2) Attorneys= fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if all of the following occur:

(a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins.

(b) The offer is not accepted within ten days.

(c) The court or administrative due process hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(3) According to Section 615 of Part B of the IDEA, attorneys= fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial process.

(4) Notwithstanding the paragraph on prohibition of attorneys= fees in this section, an award of attorneys= fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in this section, the court reduces accordingly the amount of the attorneys= fees awarded if the court finds that any of the follow occurs:

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

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

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

(d) The attorney representing the parent did not provide to the school district/agency the appropriate information in the due process complaint in accordance with this section.

(6) The provisions regarding reduction of amount of attorneys= fees do not apply in any action or proceeding if the court finds that the State or school district/agency unreasonably protracted the final resolution of the action or proceeding or if there was a violation of Section 615 of Part of B of the IDEA.

11. Student=s Status during Proceedings

a. Except as provided in Part B of the IDEA, during the pendency of any administrative or judicial proceeding under section VIII, part G, ADue Process Hearings,≡ unless the State or school district/agency and the parents of the student agree otherwise, the student must remain in his or her current educational placement.

b. If the administrative or judicial proceeding involves an application for initial admission to a school district/agency, the student with the consent of the parents must be placed in the school district/agency until the completion of the proceedings.

90 FINAL REGULATIONS

c. If the decision of a due process hearing officer in a due process hearing conducted by a state review official in an administrative appeal agrees with the student=s parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or the school district/agency and the parents for the purposes of this section of these regulations.

12. Investigation of Complaints

a. Filing a Complaint

(1) The complaint must include a statement that the school district/agency has violated a requirement of Part B of the IDEA, state law, or State Board of Education regulations and the facts on which the statement is based.

(2) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the SDE, unless a longer period is reasonable because the violation is continuing or the individual or organization is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the SDE.

(3) If a written complaint is received that is also the subject of a due process hearing relating to either the school district=s/agency=s proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, the provision of a FAPE to the student, or the disciplinary procedures under Part B of the IDEA, or if the written complaint contains multiple issues, of which one or more are a part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint, however, that is not a part of the due process action must be resolved using the procedures described in this section of these regulations.

(4) If an issue is raised in a complaint filed under this section of these regulations that has previously been decided in a due process hearing involving the same parties, the hearing officer decision is binding and the SDE must inform the individual or organization filing the complaint to that effect.

(5) A complaint alleging a school district=s/agency=s failure to implement a due process hearing must be resolved by the SDE.

b. Complaint Process

(1) After receiving an initial complaint from an individual or organization, the SDE will notify the school district=s/agency=s coordinator of Programs for Children with Disabilities and/or superintendent by telephone to

(a) report the nature of the initial complaint,

(b) obtain information regarding the school district=s/agency=s efforts to resolve the problem area, and

(c) inform the school district/agency that the complaint is being mailed to the district, and that following the school district=s/agency=s receipt, the school district/agency must respond to the SDE.

(2) Information copies of the written correspondence relative to the complaint will be sent to the individual or organization filing the complaint when they are mailed to the school district/agency. When a complaint is received and a determination is made that it is not a violation of Part B of the IDEA, state law, or State Board of Education regulations, the Office of Exceptional Children will notify all parties of the fact that it is not a violation.

(3) When the school district/agency responds to the complaint, which should describe any corrective

efforts/actions that may have been taken to resolve the problem area, the SDE will forward a copy of the response to the individual or organization filing the complaint. A letter explaining that the individual or organization filing the complaint has an opportunity to submit additional information in writing about the allegations in the complaint will also be forwarded along with the response. If the SDE deems it necessary, it will conduct an on-site investigation. Additionally, staff from the SDE will meet with appropriate school district/agency personnel, if appropriate, to provide technical assistance in resolving the problem area. The SDE will issue a written decision that includes findings of facts and conclusions and the reasons for its final decision. The individual or organization filing the complaint retains the right to request a continuation of the complaint process if at any time the individual or organization finds that the school district/agency did not implement the necessary procedures to resolve the complaint. The entire complaint process shall be completed within sixty calendar days from receipt of the initial complaint. Exceptional circumstances, however, may result in an extension of the timelines set forth in these regulations.

c. Sanctions

If a complaint is not resolved or a resolved complaint must be reopened, the SDE will implement appropriate sanctions such as a delay in the release of funds to achieve resolution. The SDE will also remediate the denial of services on an individual student basis and will ensure the future provision of services to all students with disabilities.

13. Surrogate Parents

a. Determination of Need

Each school district/agency must ensure that the rights of a student are protected if any one of the following situations exists:

- (1) No parent can be identified.
- (2) The school district/agency, after reasonable efforts, cannot discover the whereabouts of a parent.

(3) The student is a ward of the State, which means that he or she is in the legal custody of the South Carolina Department of Social Services. In accordance with S.C. Code Ann. § 20-7-490(23) (Supp. 2000), legal custody means the right to the physical custody, care, and control of a child; the right to determine where the student shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care.

b. Duty of School District/Agency

(1) In an effort to determine if the parent or guardian is in fact unknown or has not yet been located, the school district/agency must make a reasonable effort to locate the parent or guardian. Reasonable efforts include, but are not to be limited to, the following: documented phone calls, certified letters, and visits to the parent=s or guardian=s last known address, and documented contacts with relatives, neighbors, and other agencies. In order to determine if a student is a ward of the State, the school district/agency must obtain a copy of the court order stating that the South Carolina Department of Social Services has legal custody of the student. A surrogate parent may then be named.

(2) The school district/agency may assign a surrogate parent only after a determination has been made and written documentation maintained that the parent or guardian is unknown or cannot be located or that the student is a ward of the State. The appointment of a surrogate parent may not be utilized to circumvent the procedures for gaining parental consent for evaluation/placement or to replace mediation or due process hearings. A surrogate parent may be assigned as soon as the student is suspected of having a disability under Part B of the IDEA.

- (3) In cases where a parent is unresponsive, lives a great distance from his or her child=s school, or is

92 FINAL REGULATIONS

incarcerated, the school district/agency may obtain written authorization from the parent to appoint a surrogate parent to represent the student as soon as the student is suspected of having a disability or has been determined to need a surrogate parent under Part B of the IDEA. Parental permission for the appointment of a surrogate must be voluntary and explicitly authorized in writing and is revocable at any time. The surrogate, once appointed, may then represent the student until such time as the parent revokes authorization for the student to be represented by the surrogate parent.

c. Qualifications

(1) In order to be selected as a surrogate parent, an individual must

(a) be an adult with no interest that conflicts with the interest of the student whom he or she represents,

(b) have knowledge and skills that ensure adequate representation of the student,

(c) be capable of becoming thoroughly acquainted with the student=s educational needs,

(d) be capable of understanding the cultural and linguistic background of the student whom he or she represents, and

(e) not be an employee of the SDE, the school district, or any other agency (public or private) involved in the education or care of the student, such as an employee of the South Carolina Department of Disabilities and Special Needs or the South Carolina Department of Social Services.

(2) A school district agency may select as a surrogate a person who is an employee of a nonpublic agency that provides only noneducational care of the student and who meets the other standards for persons selected as surrogates.

d. Persons Disqualified from Serving as Surrogate Parents

(1) Any person determined to have a conflict of interest, the determination of which must be made on a case-by-case basis. In general, a person would be considered to have a conflict of interest if he or she held a job or other position (e.g., school board member) that might restrict or bias his or her ability to advocate for all of the services required to ensure a FAPE for a student with a disability.

(2) No employee of a public agency involved in the education or care of a student may serve as a surrogate parent. This exclusion applies to all employees of that agency and not just to the employee who is working directly with a particular student. This exclusion prohibits these individuals from serving as surrogates under any circumstances, even as volunteers on their own time.

e. Assignment

(1) When a student with a disability needs a surrogate parent, the student=s school district is responsible for appointing the surrogate. When a student who is a ward of the State is placed in a foster home and is presented for placement in a program for students with disabilities in the school district in which the foster parent resides, the school district is responsible for appointing the surrogate parent. In order to determine if a student is a ward of the State, the school district/agency must obtain a copy of the court order stating that the student is in the legal custody of the South Carolina Department of Social Services.

(2) When a student who needs a surrogate parent is placed by a school district or the court for educational or noneducational reasons in a state-operated program having educational responsibility, the state-operated program is responsible for appointing a surrogate parent.

f. Removal

(1) A surrogate parent must be removed when a parent comes forth to represent the student or revokes consent or when the student is no longer eligible for special education. This removal may occur only if the parents' rights have not been terminated and the student is not a ward of the State. A person serving as a surrogate may resign at any time by submitting his or her resignation in writing to the school district/agency.

(2) In cases where there are disagreements about the qualifications of the person serving as a surrogate parent, a due process hearing may be conducted to challenge the choice of this person as the surrogate parent.

g. Procurement

(1) The school district/agency must procure persons who can serve as surrogate parents and must maintain a registry of eligible persons, and the school district/agency may compensate or make arrangements for the compensation of these persons when they are utilized. A surrogate is not to be considered an employee of the school district/agency solely because he or she is paid to serve as a surrogate parent.

(2) Surrogates, when needed, must be selected by the school district/agency superintendent or chief administrative officer, or his or her designee, consistent with the requirements in this section of these regulations and the IDEA regulations. A qualified person external to the geographical boundaries of the school district/agency may be selected.

14. Transfer of Parental Rights at Age of Majority

a. All rights of the parents must be transferred to the student upon his or her reaching the age of majority (eighteen years of age). Prior to the student's reaching the age of majority, the school district/agency must designate a person to explain orally to the student his or her rights under the IDEA at the IEP team meeting before the student turns eighteen. The school district/agency must provide notice to the parents and the student regarding the transfer of rights. The school district/agency must provide any notice required under the IDEA to both the parent and the student. All rights of parents under the IDEA transfer to students who are incarcerated in an adult or juvenile, state or local, correctional institution.

b. If the student has been determined to be incompetent in accordance with state laws, or if the parent obtains a power of attorney, or if the student signs a waiver provided by the school district/agency stating that the parent may continue to be accorded all rights under IDEA, the rights shall not be transferred. The student may, however, revoke the power of attorney or the waiver at any time.

15. Disciplinary Procedures

a. Change of Placement for Disciplinary Removals

For a student with a disability, a change of placement from his or her current educational placement occurs if the removal or suspension is for more than ten consecutive school days or if the student is subjected to a series of removals or suspensions that constitute a pattern. If the student has been suspended for more than ten days, the school district/agency must then examine the length of each removal or suspension and the total amount of time the student is removed or suspended, and the proximity of the removals or suspensions to each other. If a student is removed or suspended for more than ten consecutive school days for a single offense, the removal is also a violation of state law (S.C. Code Ann. § 59-63-220 (1990)).

b. Authority of School Personnel

(1) School personnel may order

94 FINAL REGULATIONS

(a) Removals or suspensions for up to ten days in a school year to the extent that the removals or suspensions would be applied to students without disabilities. School personnel may neither remove nor suspend a student with a disability from his or her current educational placement for more than ten consecutive school days for any violation of school rules.

(b) Additional removals or suspension of not more than ten consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement in accordance with the procedures in this section:

(i) School districts/agencies are not required to provide services to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year if services are not provided to a student without disabilities who has been similarly removed.

(ii) The school district/agency must, however, ensure that services are provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP for the remainder of the removals or suspensions if the student with a disability has already been removed or suspended from his or her current placement for more than ten school days in the school year. School personnel, in consultation with the student's special education teacher, must determine the extent to which services are necessary.

(c) A change in the placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to, but not for more than forty-five days, if either of the following occurs:

(i) The student carries a weapon to or possesses a weapon at school, on school premises, or a school function under the jurisdiction of a school district/agency.

(ii) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function under the jurisdiction of a school district/agency.

(d) For a weapons or drug offense, regardless of whether the offense is a manifestation of the student's disability, school personnel may initiate a change of placement for a student with a disability to an interim alternative educational setting.

(2) Either before or not later than ten business days after the first removal or suspension of the student for more than ten school days in a school year or the commencing of a change of placement for actions including instances of drugs or weapons, the following steps must be taken:

(a) If a functional behavioral assessment was not conducted and a behavioral intervention plan was not implemented for the student before the behavior that resulted in the removal or suspension, the school district/agency must convene an IEP meeting to develop an assessment plan.

(b) If the student already has a behavioral intervention plan, the IEP team must meet to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.

(3) As soon as practicable after developing the behavioral intervention plan and completing the assessments required by the plan, the school district/agency must convene an IEP meeting to develop appropriate interventions to address that behavior and must implement those interventions.

(4) If, subsequently, a student with a disability who has a behavioral intervention plan and who has been removed or suspended from the student=s current educational placement for more than ten school days in a school year is subjected to an additional removal or suspension that does not constitute a change of placement under these procedures, the IEP team members must review the behavioral intervention plan and its implementation to determine if modifications are necessary.

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

(6) The federal definitions for controlled substance, illegal drug, and weapon as stated in Part B of the IDEA are included in section B, part 6, ADefinitions.=

c. Authority of Hearing Officer

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

(a) determines that the school district/agency has demonstrated that maintaining the current placement of the student is substantially likely to result in injury to the student or to others if he or she remains in the current placement;

(b) considers whether the student=s current placement is designed to provide him or her a FAPE;

(c) considers whether the school district/agency has made reasonable efforts to minimize the risk of harm in the student=s current placement, including the use of supplementary aids and services; and

(d) determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student=s special education teacher meets the requirements in these regulations.

(2) A hearing officer may order a change of placement for a student with a disability to an interim alternative educational setting for dangerousness regardless of whether the offense is a manifestation of the student=s disability.

d. Determination of Setting

(1) The IEP team must determine the interim alternative educational setting when there is a change in placement made by school personnel in cases of weapons or drugs or when the team is requesting that a hearing officer change the placement of a student because it is substantially likely that the student will cause injury to him- or herself or to others.

(2) Any interim alternative educational setting in which a student is placed under these procedures must

(a) be selected so as to enable the student to continue to participate in the general curriculum although he or she is in another setting and to continue to receive those services and modifications, including those described in the student=s current IEP, that will enable him or her to meet the goals set out in that IEP and

(b) include services and modifications designed to address the behavior described in the above procedures so that such behavior does not recur.

e. Any Removal Where Parent Agrees to Change in Placement

The student=s IEP team must determine the extent to which services are necessary to enable the student to

96 FINAL REGULATIONS

appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student=s IEP if the student=s parent agrees to a change in placement based on behavior.

f. In accordance with state statutes, no student, including a student with a disability, may be suspended in excess of ten days for any one offense and for not more than thirty days in any one school year.

16. Manifestation Determination Review

a. If an action is contemplated regarding behavior for violations involving weapons or drugs as described in the above procedures, or if a due process hearing officer has ordered a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five days, or if an action involving a removal of a student from the student=s current educational placement for more than ten school days in a given school year is contemplated for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of the school district/agency that applies to all students, the following procedures must be followed:

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision, and a full explanation of procedural safeguards must be provided to the parents.

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

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

c. In carrying out a manifestation review, the IEP team may determine that the behavior of the student was not a manifestation of his or her disability only if the IEP team and other qualified personnel first consider, in terms of the behavior subject to disciplinary action, all relevant information, including

(1) the evaluation and diagnostic results as well as other relevant information supplied by the parents of the student,

(2) the observations of the student, and

(3) the student=s IEP and placement.

d. After completing these considerations, the IEP team and other qualified personnel must make the following determinations:

(1) that, in relationship to the behavior subject to disciplinary action, the student=s IEP and placement were appropriate and that special education services, supplementary aids and services, and behavior intervention strategies provided were consistent with the student=s IEP and placement and

(2) that the student=s disability did not impair his or her ability to understand the impact and the consequences of the behavior that was subject to disciplinary action and that the disability did not impair his or her capacity to control the behavior.

e. If the IEP team and other qualified personnel determine that any of these standards were not met, the behavior must be considered a manifestation of the student=s disability.

f. The manifestation review may be conducted at the same IEP meeting that is convened regarding development/review of a functional behavioral assessment plan and appropriate behavioral interventions.

g. If, in the manifestation determination review, the school district/agency identifies deficiencies in the student=s IEP or placement or in the implementation of either of these, immediate steps must be taken to remedy those deficiencies.

17. Determination That the Behavior Was Not a Manifestation of the Disability

a. If the result of the manifestation determination review is that the behavior of the student with a disability was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student, except that a FAPE (i.e., appropriate services to enable the student to advance toward achieving the goals set out in the student=s IEP) must continue to be provided.

b. If the school district/agency initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability must be transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

c. If a parent requests a due process hearing to challenge the determination made through the review that the behavior of the student was not a manifestation of the student=s disability, the rule of AStay Put≅ applies pending the due process hearing officer=s decision unless any one of the following conditions exist:

- (1) The period of time that the student has been assigned to the interim alternative educational setting has expired.
- (2) The student has been removed for dangerousness by a due process hearing officer.
- (3) The parents and the school district/agency agree otherwise.

18. Appeal

a. If the student=s parents disagree with a determination that the student=s behavior was not a manifestation of the student=s disability or with any decision regarding placement under the discipline procedures, the parent may request a due process hearing. The school district/agency must arrange for an expedited hearing in this case if a parent requests a hearing.

b. In reviewing a decision with respect to the manifestation determination, the due process hearing officer must determine whether the school district/agency has demonstrated that the student=s behavior was not a manifestation of his or her disability consistent with the procedures that must be used by the IEP team in conducting a manifestation determination review.

c. In reviewing a decision to place the student in an interim alternative educational setting, the due process hearing officer must

- (1) determine that the school district/agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others,
- (2) consider the appropriateness of the student=s current placement,
- (3) consider whether the school district/agency has made reasonable efforts to minimize the risk of harm in the student=s current placement, including the use of supplementary aids and services, and
- (4) determine that the interim alternative educational setting proposed by school personnel who have consulted

98 FINAL REGULATIONS

with the student=s special education teacher meets the requirements in these regulations regarding the determination of setting.

19. Placement During Appeals

a. If a parent requests a hearing regarding a disciplinary action taken by school personnel or by a due process hearing officer to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting until the decision of the due process hearing officer has been made or until the time period provided for in these procedures has expired, whichever has occurred first, unless the parent and the school district/agency agree otherwise.

b. If the school district/agency proposes a change in placement after the expiration of the student=s removal to the interim alternative educational setting, then the student returns to his or her current placement (the setting prior to the student=s being removed to the interim alternative educational setting). The student remains in his or her current placement during the pendency of any administrative or judicial proceedings regarding the proposed change in placement, unless both parties agree otherwise or a due process hearing officer or court orders otherwise.

c. If school personnel maintain that the student is dangerous to him- or herself or to others but the parent does not agree for the student to be removed from the present educational placement, the school district/agency can seek injunctive relief through the courts to have the student removed. Schools are also able to remove a student under these circumstances during the pendency of the proceedings through an expedited due process hearing with a due process hearing officer.

(1) If a court, a due process hearing officer, or a review official agrees with the student's parent that the student should not be removed from the present educational placement, such placement must be treated as an agreement between the school district/agency and the parents, and the student must remain in the present educational placement during pendency of the proceedings.

(2) If a court, a due process hearing officer, or a review official agrees with the school district that the student is dangerous to him- or herself or to others and agrees with the proposed setting for the change in placement, then the student must remain in the placement requested by the school district.

(3) If a court, a due process hearing officer, or a review official agrees with the school district that the student is dangerous him- or herself or to others but *disagrees* with the proposed setting for the change in placement, then the court, the due process hearing officer, or the review official may order the school district to propose another setting.

d. In determining whether the student may be placed in the interim alternative educational setting or in another appropriate placement, the due process hearing officer must apply the same procedures as those specified in the section titled AAppeal= (above) to determine whether the proposed placement is appropriate.

e. A placement made in accordance with these procedures must not last longer than forty-five calendar days, unless school personnel have been granted an additional period of removal. This additional period of removal must be granted either by a court through a request for further injunctive relief, by a due process hearing officer through another expedited due process hearing, or by agreement between the school district/agency and the parent.

f. Any interim alternative educational setting selected by school personnel must meet the requirements in these regulations for determining such a setting.

20. Protections for Students Not Yet Eligible for Special Education and Related Services

a. A student who has not been determined to be eligible for special education and related services and who has

engaged in behavior that violates any rule or code of conduct of the school district/agency, including any behavior described in these procedures, may assert any of the protections provided for in these procedures under the IDEA if the school district/agency had knowledge (as determined in the following procedure) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

b. The school district/agency must be deemed to have knowledge that a student is a student with a disability if the following standards are met:

(1) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents his or her from making a written statement) to personnel of the school district/agency that the student is in need of special education and related services.

(2) The behavior or performance of the student demonstrates the need for these services in accordance with the definition of a child with a disability in section B, part 3, ADefinitions.≡

(3) The parent has requested an evaluation of the student to determine if he or she is a student with a disability.

(4) The teacher of the student, or other personnel of the school district/agency, has expressed concern about the behavior or performance of the student to the director of special education of the school district/agency or to other personnel of the school district/agency in accordance with the school district=s/agency=s established Child Find or special education referral system.

c. The school district/agency would not be deemed to have knowledge if, as a result of its receiving the information in the preceding procedure, the school district/agency carried out either of the following processes:

(1) conducted an evaluation under the procedures specified in the *Criteria for Entry into Programs of Special Education for Students with Disabilities* and in State Board Regulation 43-243.1 and determined that the student did not meet the criteria for having a disability or

(2) determined that an evaluation was not necessary and provided notice to the student=s parents of its determination in accordance with the procedures under the section in the procedural safeguards section of these regulations titled APrior Notice by the School District/Agency and Content of Notice.≡

If, prior to taking disciplinary action against a student, the school district/agency does not have knowledge that he or she has a disability, the student may be subjected to the same disciplinary measures as those applied to students without disabilities who have engaged in comparable behaviors, consistent with the following:

(1) If a request is made for an evaluation of a student during the time period in which he or she is subjected to disciplinary measures under the above procedures, the evaluation must be conducted in an expedited manner, but must be completed within twenty-five calendar days after the parents have given permission to evaluate.

(2) Until the evaluation is completed, the student must remain in the educational placement determined by school authorities, including suspension or expulsion.

(3) If the student is determined to be one with a disability, the school district/agency must provide special education and related services in accordance with state and federal regulations.

21. Expedited Due Process Hearings

a. Expedited due process hearings under these procedures must

100 FINAL REGULATIONS

(1) result in a decision within twenty-five calendar days of the request for the hearing, unless the parents and school officials agree otherwise, and

(2) meet the requirements for due process hearings included in the procedures in the section of these regulations titled ADue Process Hearings,≡ except that for the purposes of expedited due process hearings, the following principles must hold:

(a) The introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the hearing must be prohibited.

(b) At least two business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and all recommendations based on the offering party=s evaluations that the party intends to use at the hearing.

(c) The expedited hearing must be conducted by a due process hearing officer who meets the qualifications included in the procedure in the section titled ADue Process Hearing Officers.≡

b. Parents must be notified within two business days of the determination that an expedited hearing must occur.

c. A written decision must be mailed to the parties within forty-five calendar days of the school district=s/agency=s receipt of the request for the hearing, without exceptions or extensions. This timeline is in effect for hearings requested by parents or school districts/agencies.

d. All procedural rules for expedited hearings are the same as for all impartial due process hearings.

e. The decisions on expedited due process hearings may be appealed under the due process appeal procedures included in this section of these regulations.

22. Referral to and Action by Law Enforcement and Judicial Authorities

a. The school district/agency may report a crime committed by a student with a disability to appropriate authorities on the same basis as for students without disabilities and may not prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

b. Copies of the special education and disciplinary records of the student may be transmitted for consideration by the appropriate authorities only as permitted under the FERPA, which is with the prior written consent of the parent or the student if he or she is aged eighteen or older or under one of the following exceptions to the consent requirements:

(1) in compliance with a lawfully issued subpoena or court order if the school district/agency first makes a reasonable attempt to notify the parents of the subpoena or order or

(2) in connection with an emergency if the knowledge is necessary to protect the health or safety of the student or other individuals.

23. Documentation

All documentation required to meet state and federal regulations concerning due process procedures must be maintained on a student-by-student basis by the school district/agency legally responsible for providing a FAPE for the student.

I. Least Restrictive Environment (LRE)

1. General LRE Requirements

Each school district/agency must ensure that to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled and that special classes, separate schooling, or other removals of students with disabilities from the regular educational environment occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. Continuum of Alternative Placements

a. Each school district/agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. This continuum must be considered in the determination of the placements of the student with disabilities.

b. All the various components of the IEP (e.g., levels of educational performance, goals, objectives/benchmarks) must be reviewed and considered by the IEP team in selecting the appropriate placement option for the student. In making its recommendation, the IEP team must consider each of the program options from the range of options as follows:

- (1) regular class with supportive services (itinerant/resource),
- (2) self-contained classes,
- (3) special school instruction,
- (4) hospital/homebound/home-based instruction,
- (5) community agency programs (e.g., Head Start for preschool children), and
- (6) other program options.

3. Placements

a. In determining the educational placement of a student with a disability, including a preschool child with a disability, each school district/agency must ensure that the placement decision is made by a group of persons, including the parents, who are knowledgeable about the student and about the meaning of the evaluation data and the placement options and must ensure that the placement decision is made in conformity with the LRE provisions of this section of these regulations and in Part B of the IDEA.

b. The IEP team must verify that the program option recommended for the student is determined annually and that it is as close as possible to the student's home.

c. Unless the IEP of a student with a disability requires some other arrangement, the student must be educated in the school that he or she would attend if nondisabled.

d. A student with a disability must not be removed from age-appropriate general classrooms solely because of the modifications in the general curriculum that he or she needs.

102 FINAL REGULATIONS

e. In selecting the LRE, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs.

4. Nonacademic Placements

In providing or arranging for the provision of nonacademic and extracurricular services and activities including meals, recess periods, and the services and activities set forth in Part B of the IDEA and in this section of these regulations, each school district/agency must ensure that each student with a disability participates with nondisabled students in those services and activities to the maximum extent appropriate to the needs of that student.

5. Students in Public or Private Institutions

The SDE shall ensure that the LRE requirements stated in Part B of the IDEA and in this section of these regulations are effectively implemented including if necessary, making such arrangements with public and private institutions as memorandums of agreement or special implementation procedures.

6. Technical Assistance and Training Activities

The SDE shall carry out activities to ensure that teachers and administrators in all school districts/agencies are fully informed about their responsibilities for implementing the LRE requirements stated in Part B of the IDEA and in this section of these regulations and that they are provided with the technical assistance and training necessary to assist them in this effort.

7. Monitoring Activities

a. The SDE shall carry out activities to ensure that the LRE provisions in Part B of the IDEA are implemented as prescribed therein.

b. If there is evidence that a school district/agency makes placements that are inconsistent with the LRE provisions in Part B of the IDEA, the SDE shall

(1) review the school district=s/agency=s justification for its actions and

(2) assist in planning and implementing any necessary corrective action.

J. Transition of Children from Part C to Preschool Programs

1. Children who are participating in early intervention programs assisted under Part C of the IDEA and who will participate in preschool programs assisted under Part B of the IDEA must experience a smooth and effective transition to those preschool programs.

2. School districts must evaluate a child in accordance with criteria established by the SDE and must develop an IEP within timelines that allow placement to occur on the child=s third birthday.

3. Each school district must participate in transition planning conferences arranged by the designated lead agency for Part C programs (South Carolina Department of Health and Environmental Control).

K. Private Schools

1. Students with Disabilities in Private Schools Placed or Referred by Public Agencies

a. Responsibility of the SDE

(1) The SDE ensures that a student with a disability who is placed in or referred to a private school or facility by a school district is provided special education and related services in conformance with an IEP that meets the requirements of the section of these regulations titled Individualized Education Programs and that there is no cost to the parents. These students must be provided an education that meets the standards that apply to education provided by the SDE and school districts and must have all of the rights of a student with a disability who is served by a school district.

(2) When it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the State. After determination has been made that neither the public schools nor another governmental agency of the State can adequately provide special education and related services, then private programs within the State (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

(3) When it is clearly unfeasible to provide a FAPE for a student with a disability in a public school program, the school district may contract with other agencies or organizations, public or private, within or outside of the State, provided that proper application has been made by the school district and approved by the SDE. Students placed in these programs by the SDE/school district must have all of the rights they would have if served by the school district, and the agency or organization must meet all of the standards applicable to the SDE/school district.

(4) Upon the school district's submission of a properly completed application form and any supplemental information that may be required, the SDE shall examine the material for approval of the application. Approval shall be only for those applications where it is impractical and inappropriate to provide special education and related services in a public school setting consistent in accordance with an IEP.

(5) The school district shall pay no more than one student's portion of funds generated under the South Carolina Education Finance Act. The school district may also accept donations and/or utilize other funds (e.g., Title XX, CHAMPUS) to defray the cost of private school placement. Monies available under the IDEA may be utilized to pay the remaining balance (if any) of the private school costs in accordance with the following procedure:

(a) Fifty percent of the outstanding balance must be paid from the school district's allocation of IDEA funds or other funds.

(b) Fifty percent of the outstanding balance must be paid by the SDE.

(6) The requirement that the student's residential program, including nonmedical care and room and board, be at no cost to the parents applies only to those placements made by the SDE/school district for educational purposes.

b. Implementation by the SDE

When students with disabilities are placed in private schools by the SDE/school district, the private schools must be in compliance with the standards of the SDE/school district. Private schools located in South Carolina must meet the standards that apply to the SDE/school district. Compliance must be monitored through on-site visits and written reports. Copies of applicable standards must be disseminated to each private school and facility to which a school district has referred or placed a student with a disability. An opportunity must be provided for those private schools and facilities to participate in the development and revision of State standards that apply to them.

104 FINAL REGULATIONS

c. Upon notification by the school district of their intent to place a student with a disability in a private school, the school district must provide copies of the following documents to the private school:

(1) defined program/accreditation procedures approved by the State Board of Education,

(2) *Criteria for Entry into Programs of Special Education for Students with Disabilities*, and

(3) the SDE=s guidance documents (*Confidentiality, Due Process, Individualized Education Programs/Least Restrictive Environment, Child Find, Surrogate Parents, Listing of Parental Rights, and Mediation*).

2. Students with Disabilities Enrolled by Their Parents in Private Schools When a FAPE Is at Issue

a. Placement of Students by Parents If a FAPE Is at Issue

A school district cannot be required to pay for the cost of education, including special education and related services, of a student with a disability at the private school or facility if that school district made a FAPE available to the student and the parents elected to place the student in a private school or facility. The school district, however, must include that student in the populations whose needs are addressed in a manner consistent with the section of these regulations titled AStudents with Disabilities Enrolled by Their Parents in Private Schools≡ in the private schools section.

b. Disagreements about a FAPE

Disagreements between a parent and a school district regarding the availability of an appropriate program for the student and the question of financial responsibility are subject to the due process procedures specified in Part B of the IDEA and in the section of these regulations titled AProcedural Safeguards.≡

c. Reimbursement for Private School Placement

If the parents of a student with a disability who previously received special education and related services under the authority of a school district enroll him or her in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or due process hearing officer finds that the school district had not made a FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a due process hearing officer or a court even if it does not meet the state standards that apply to education provided by the SDE and school districts.

d. Limitation on Reimbursement

The cost of the reimbursement may be reduced or denied if any of the following occur:

(1) At the most recent IEP meeting that the parents attended prior to removal of the student from the school district, the parents not only neglected to inform the IEP team that they were rejecting the placement proposed by the school district to provide a FAPE for their child but also failed to state their concerns and their intent to enroll their child in a private school at public expense.

(2) Parents who did not accept the school district=s/agency=s proposed placement of their child failed to give the school district written noticeXat least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the school districtXof their intent to enroll the student in a private school.

(3) Prior to the parents= removal of their child from the school district, the school district informed the parents,

following the notice requirements specified in Part B of the IDEA and in the section of these regulations titled AProcedural Safeguards,≡ of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation.

(4) There is a judicial finding of unreasonableness with respect to actions taken by the parents.

e. Exception

Notwithstanding the prior written notice that is required of parents in this section of these regulations, the cost of reimbursement may not be reduced or denied for their failure to provide such notice if any of the following situations exist:

(1) The parents are illiterate and/or cannot write in English.

(2) Compliance with the limitation on reimbursement would likely result in physical harm or emotional trauma to the student.

(3) The school district prevented the parents from providing the notice.

(4) The parents had not been informed, pursuant to Section 615 of Part B of the IDEA, of the notice requirement in the paragraph on limitation on reimbursement above.

3. Students with Disabilities Enrolled by Their Parents in Private Schools

a. Child Find for Private School Students with Disabilities

(1) Each school district must locate, identify, and evaluate all private school students with disabilities, including students residing in the jurisdiction of the school district who attend religious schools. These students must be included in the school district=s Child Find activities and are described in the Child Find procedures approved by the SDE. The activities undertaken to carry out this responsibility for private school students with disabilities must be comparable to those undertaken for students with disabilities in public schools.

(2) Each school district must consult with appropriate representatives of private school students with disabilities on how to carry out the Child Find activities.

b. Provision of Services Basic Requirement

To the extent consistent with their number and location in the State, provision must be made for the participation of private school students with disabilities in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services in accordance with Part B of the IDEA and with this section of these regulations.

c. SDE Responsibility for Services Plan

The SDE ensures that a services plan shall be developed and implemented for each private school student with a disability who has been designated to receive special education and related services under this section of these regulations.

d. Expenditures

(1) Formula

Each school district must, on providing special education and related services to private school students

106 FINAL REGULATIONS

with disabilities (including students who are home-schooled) spend the following amounts:

(a) for students ages three through twenty-one, an amount that is the same proportion of the school district=s total subgrant under Section 611(g) of Part B of the IDEA as the proportion that private school students with disabilities ages three through twenty-one residing in its jurisdiction are to the total number of students with disabilities ages three through twenty-one in its jurisdiction and

(b) for children ages three through five, an amount that is the same proportion of the school district=s total subgrant under Section 619(g) of Part B of the IDEA as the proportion that private school children with disabilities ages three through five residing in its jurisdiction are to the total number of children with disabilities in its jurisdiction ages three through five.

(2) Child Count

In deciding how to conduct the annual count of the number of students with disabilities in the State, each school district must consult with representatives of these students who are enrolled in private schools and must ensure that the count is conducted on December 1 of each year. The child count must be used to determine the amount that the school district must spend in the next subsequent fiscal year on providing special education and related services to students with disabilities in private schools.

(3) Expenditures for Child Find May Not Be Considered

Expenditures for Child Find activities described in this section of these regulations may not be considered in determining whether the school district has met the requirements related to the formula described in this section of these regulations.

(4) Additional Services Permissible

School districts are not prohibited from providing services in excess of those required by this section of these regulations.

e. Services Determined

(1) No Individual Right to Special Education and Related Services

No private school student with a disability has an individual right to receive some or any of the special education and related services that he or she would receive if enrolled in a public school. Decisions about the services that will be provided to private school students with disabilities enrolled by their parents in private schools must be made in accordance with the information regarding child count and expenditures for Child Find in the previous section of this regulation.

(2) Consultation with Representatives of Private School Students with Disabilities

(a) Each school district must, in a timely and meaningful way, consult with appropriate representatives of private school students with disabilities regarding the funding and expenditures described in this section of these regulations, the number of private school students with disabilities, the needs of private school students with disabilities, and the location of these students in order to decide the following:

(i) which students will receive services under this section of these regulations,

- (ii) what services will be provided,
- (iii) how and where the services will be provided, and
- (iv) how the services provided will be evaluated.

(b) Each school district must give appropriate representatives of private school students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section of these regulations. The consultation must occur before the school district makes any decision that affects the opportunities of private school students with disabilities to participate in services under this section of these regulations. The school district shall make the final decisions with respect to the services to be provided to eligible private school students.

(3) Services Plan for Each Student Served Whose Parents Enrolled Them in Private Schools

If a student with a disability is enrolled in a religious or other private school and will receive special education or related services from a school district, the school district must

- (a) Initiate and conduct meetings to develop, review, and revise a services plan for the student in accordance with Part B of the IDEA and this section of these regulations.
- (b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district must use other methods to ensure participation by the private school, including individual or conference telephone calls.

f. Services Provided

(1) The services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. Private school students with disabilities may receive a different amount of a service than students with disabilities in public schools. No private school student with a disability is entitled to any service or to any amount of a service that he or she would receive if enrolled in a public school.

(2) Services Provided in Accordance with a Services Plan

Each private school student with a disability who has been designated to receive services under this section of these regulations must have a services plan that describes the specific special education and related services that the school district shall provide to him or her in the specific context of those services that the school district has determined through the process described under this section of these regulations that it will make available to private school students with disabilities. The services plan must, to the extent appropriate,

- (a) meet the requirements of Part B of the IDEA and of this section of these regulations with respect to the services provided and
- (b) be developed, reviewed, and revised consistent with Part B of the IDEA and with this section of these regulations.

g. Location of Services and Transportation

- (1) Services provided to private school students with disabilities may be provided on site at a student's private school, including a religious school.
- (2) If transportation is necessary for the eligible student to benefit from or participate in the services provided

108 FINAL REGULATIONS

under this section of these regulations, a private school student with a disability must be given conveyance from his or her school or home to a site other than the private school and from the service site to the private school, or to his or her home, depending on the timing of the services. School districts are not required to provide transportation from the student's home to the private school. The cost of the transportation may be included in calculating whether the school district has met the requirement of the section of these regulations titled *Expenditures*.

h. Due Process/Complaints

(1) Due Process Inapplicable

The procedures in the section of these regulations titled *Procedural Safeguards* do not apply to complaints that a school district has failed to meet the requirements of the section of these regulations titled *Students with Disabilities Enrolled by Their Parents in Private Schools*, including the provision of services indicated on the student's services plan.

(2) Due Process Applicable

The procedures in the section of these regulations titled *Procedural Safeguards* do apply to complaints that a school district has failed to meet the requirements of the Child Find requirements of this section of these regulations, including the requirements of the section of these regulations titled *Evaluation and Determination of Eligibility*.

(3) State Complaints

Complaints that the SDE or a school district has failed to meet the requirements of the section of these regulations titled *Students with Disabilities Enrolled by Their Parents in Private Schools* may be filed under the requirements in the procedural safeguards section of these regulations titled *Investigation of Complaints*.

i. Separate Classes Prohibited

A school district may not use funds available under Section 611 or 619 of Part B of the IDEA for classes that are organized separately on the basis of school enrollment or religion of students if the classes are at the same site and include students enrolled in public schools and those enrolled in private schools.

j. Requirements That Funds Not Benefit a Private School

A school district may not use funds provided under Section 611 or 619 of Part B of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district shall use funds provided under Part B of the IDEA to meet the special education and related services needs of students enrolled in private schools but not to meet the needs of a private school or the general needs of the students enrolled in the private school.

k. Use of Public School Personnel

A school district may use funds available under Sections 611 and 619 of Part B of the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide services under the section of these regulations titled *Students with Disabilities Enrolled by Their Parents in Private Schools* if those services are not normally provided by the private school.

l. Use of Private School Personnel

A school district may use funds available under Section 611 or 619 of Part B of the IDEA to pay an employee of

a private school to provide services under the sections of these regulations titled AChild Find for Private School Students with Disabilities and AProvision of ServicesXBasic Requirement if the employee performs the services outside of his or her regular hours of duty and if the employee performs the services under public supervision and control.

m. Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Students with Disabilities

A school district must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the school district acquires with funds under Section 611 or 619 of Part B of the IDEA for the benefit of private school students with disabilities. The school district may place equipment and supplies in a private school for the period of time needed for the program. The school district must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the facility. The school district must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and suppliesXthat is, use for other than Part B purposes. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

L. Comprehensive System of Personnel Development

A comprehensive system of personnel development (CSPD) that meets the requirements for a state improvement plan relating to personnel development in Part B of the IDEA shall be in place to ensure an adequate supply of qualified special education, general education, and related services personnel. The plan shall be updated every five years.

M. Students with Disabilities in Statewide Assessment Programs

Participation in Assessments

1. The SDE shall ensure that students with disabilities are included in general statewide and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary.

2. Students with disabilities for whom the regular state assessment program is inappropriate must participate in an alternate assessment program.

To the extent possible, students with disabilities must be taught according to the State=s standards and must be given the opportunity to graduate with a state high school diploma.

N. General Supervision

1. SDE Responsibility for General Supervision

The SDE shall be responsible for all education programs for students with disabilities in the State consistent with and as defined by the IDEA. All public education programs for students with disabilities within the State, including all programs administered by any other state or local agency, shall be under the general supervision of the persons responsible for education programs for students with disabilities in the SDE and must meet the standards of the State Board of Education. Specific guidelines required by the IDEA are stated in the *Policies and Procedures* and in the guidance documents (*Child Find*, *Confidentiality*, *Due Process*, *Individualized Education Programs/Least Restrictive Environment*, *Surrogate Parents*, and *Mediation*) developed by the Office of Exceptional Children.

110 FINAL REGULATIONS

2. The term Aresponsibility≅ means that the SDE shall ensure that all public agencies providing special education and related services for students with disabilities are in compliance with federal regulations promulgated under the authority of the IDEA. Each educational agency program for students with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for students with disabilities in the SDE. Although the IDEA and these regulations specify that the State shall ensure a FAPE for all students with disabilities, the SDE does not assume financial responsibility for all such programs operated in the State.

3. The IDEA shall not be construed to limit the responsibility of agencies other than educational agencies in the State from paying for some or all of the costs of a FAPE to be provided to students with disabilities.

4. The SDE shall have the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

O. Methods of Ensuring Services

1. Memorandums of Agreement

Memorandums of agreement shall be developed between each noneducational public agency and the SDE for the purpose of setting forth and delineating responsibilities for service delivery. Procedures for the development of interagency agreements between the SDE and other public agencies must ensure that the agreements

- a. define the financial responsibility of each agency for providing a FAPE to students with disabilities and
- b. include a mechanism for resolving interagency disputes that addresses procedures under which school districts may initiate proceedings to secure reimbursement from other agencies or otherwise implement the provisions of the agreement.

2. Obligation of Noneducational Public Agencies

Noneducational public agencies may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If a public agency other than an educational agency fails to provide or pay for the special education and needed related services, the school district/agency responsible for developing the student=s IEP must provide or pay for these services to him or her in a timely manner. The school district/agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency shall reimburse the school district/agency.

3. Students with Disabilities Who Are Covered by Public Insurance

A public agency may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for required services to enable the student to receive a FAPE. With regard to services required to provide a FAPE to an eligible student, the public agency may not

- a. require parents to sign up for or enroll in public insurance programs in order for their child to receive a FAPE under Part B of the IDEA;
- b. require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided (although the public agency may pay the cost that the parent otherwise would be required to pay as described below in the sections titled AStudents with Disabilities Who Are Covered by Private

Insurance and Use of Part B Funds); or

c. use a student's benefits under a public insurance program if that use would

(1) decrease available lifetime coverage or any other insured benefit

(2) result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school,

(3) increase premiums or lead to the discontinuation of insurance, or

(4) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

4. Students with Disabilities Who Are Covered by Private Insurance

With regard to services required to provide a FAPE to an eligible student, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent as required in Part B of the IDEA. Each time the public agency proposes to access the parent's private insurance proceeds, it must

a. obtain parental consent in accordance with this section of these regulations and

b. inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

5. Use of Part B Funds

If a school district/agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified services, the school district/agency may use its Part B funds to pay for the service in order to ensure a FAPE. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parents would incur a cost, the school district/agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use their own insurance (e.g., the deductible or co-pay amounts).

6. Proceeds from Public or Private Insurance

Proceeds from public or private insurance must not be treated as program income for purposes of 34 C.F.R. § 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services, those funds must not be considered a state or local funds for purposes of the maintenance of effort provisions of Part B of the IDEA.

7. General

Nothing in this section may be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act or any other public insurance program.

P. Hearings Related to LEA (Local Educational Agency) Eligibility

The SDE shall not make any final determination that a school district is not eligible for assistance under Part B of the

112 FINAL REGULATIONS

IDEA without first giving the school district reasonable notice and an opportunity for a hearing under 34 C.F.R. § 76.401(d).

Q. Recovery of Funds for Misclassified Students

The SDE shall seek to recover funds or portions thereof, as appropriate, of entitlements under Part B of the IDEA for students who have been erroneously classified as disabled and included in the count mechanism under Section 611(a) or 611(d) of Part B of the IDEA. The term Erroneous classification means that the student has not been evaluated and placed in programs for students with disabilities in accordance with these regulations and has not been afforded the procedural safeguards in the section of these regulations titled AProcedural Safeguards.

1. The SDE shall seek to recover funds, or portions thereof, as appropriate, of entitlements under Part B of the IDEA for any of the following reasons:

- a. Students are not enrolled in a school or program operated or supported by a public agency.
- b. Students are not provided special education that meets state standards.
- c. Students are not provided a related service that they need to assist them in benefiting from special education.
- d. Students are receiving special education funded solely by the federal government.
- e. Students are erroneously classified as disabled and included in the count mechanism of the IDEA.
- f. Students have been counted more than once (i.e., duplicated count).
- g. The SDE has determined that a school district/agency is unable or unwilling to establish and maintain a program of free and appropriate education (FAPE) that meets the requirements of the IDEA.
- h. The SDE has determined that a school district/agency is unable or unwilling to be consolidated with other agencies in accordance with the IDEA.

2. Should the SDE find it necessary to use payments for students in the instances described in this section of these regulations, the school district/agency is not absolved of responsibility for providing free and appropriate programs of special education and related services for such students under South Carolina statutes.

3. Determination of students erroneously classified as disabled shall be made by the following means:

- a. a voluntary admission by the school district/agency which shall be signed by the chief administrative officer of the district/agency;
- b. compliance monitoring conducted by the SDE, which shall include teacher, parent, student, and principal interviews, as well as classroom observations and student folder reviews;
- c. monitoring of the December 1 child count;
- d. unresolvable complaints received from individuals, agencies or other parties that are substantiated by SDE investigation, with final determination being made by the State Superintendent of Education; and
- e. financial audits.

4. If the school district/agency is unable or unwilling to consolidate with another district/agency or cannot adequately serve some few students, determination shall be made by the SDE. These reviews shall include definitive written reports by the chief administrative officer of the school district/agency detailing the circumstances and presenting statements of efforts made to serve the students of discussion as well as statements as to what the school district shall accord these students toward a FAPE. The State Superintendent of Education shall make the final determination of the district=s/agency's ability or inability to serve the students described in this section of these regulations.

5. Upon determination of the need for recovery of funds under the IDEA, one of the following procedures shall apply:

a. Further payment to the school district/agency shall be discontinued in the amount consistent with the product of the number of students erroneously classified multiplied by the amount of the entitlement per student for that school year.

b. The State Superintendent of Education and the directors of the Office of Exceptional Children and the Office of Finance shall require reimbursement to the SDE in the amount consistent with the product of the number of students erroneously classified multiplied by the amount of the entitlement per student for that school year.

c. If the funds recovered are current and available for utilization by the SDE, the funds will be redistributed to school districts/agencies under a reallocation or utilized for approved activities.

d. If the funds recovered are no longer available for utilization by the SDE, the SDE will submit a check to the Office of Special Education Programs (OSEP), United States Department of Education, in the amount recovered from the school district/agency.

e. The SDE will ensure that no final action will be taken regarding the recovery of funds before allowing a school district/agency reasonable notice and an opportunity for a hearing. These procedures are delineated in Section 300.144 of Part B of the IDEA, A Hearings related to LEA eligibility.≡

R. State Advisory Council

The South Carolina Advisory Council on the Education of Individuals with Disabilities shall be organized and function in accordance with Part B of the IDEA.

1. Establishment of Advisory Council

The Advisory Council shall provide policy guidance with respect to special education and related services for students with disabilities in the State. The State Superintendent of Education shall appoint members to the Advisory Council for a three-year term.

2. Membership

Membership shall be based on the requirements of the IDEA, S.C. Code Ann. § 59-36-10 *et seq.* (Supp. 2000) (Preschool Programs for Children with Disabilities), and the Advisory Council bylaws. The Advisory Council membership shall be comprised of parents of children with disabilities; individuals with disabilities; teachers of students with disabilities; faculty in the departments of special education and general education in institutions of higher education; state and local education officials including principals and superintendents; administrators of programs for students with disabilities; representatives of private schools and public charter schools; a representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities; representatives from the state juvenile and adult corrections agencies; and representatives from advocacy groups, organizations, and state agencies that provide support services to students with disabilities. The majority of the members of the council shall be individuals with

114 FINAL REGULATIONS

disabilities and parents of children with disabilities.

3. Advisory Council Functions

The Advisory Council shall have the following goals:

- a. to provide assistance in the development of strategies for meeting the educational needs, including the unmet needs, of students with disabilities ages three through twenty-one;
- b. to review and make recommendations on the State=s policies and procedures to be submitted to the U.S. Department of Education for a FAPE in the LRE for students with disabilities;
- c. to review and make recommendations on regulations and statutes proposed to the State Board of Education and the South Carolina General Assembly;
- d. to provide assistance in the development of evaluations and reporting on data to the Secretary of Education;
- e. to provide assistance in the development of corrective action plans to address findings identified in federal monitoring reports;
- f. to provide assistance in the development and implementation of policies relating to the coordination of services for students with disabilities;
- g. to submit an annual report to the South Carolina General Assembly on the education of students with disabilities ages three through five;
- h. to submit an annual report to the general public, consistent with other public reporting requirements of Part B of the IDEA, on the activities, accomplishments, and recommendations of the Advisory Council; and
- i. to advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.

4. Advisory Council Procedures

The Advisory Council shall meet as often as necessary to conduct its business, though usually no fewer than three times annually. Official minutes shall be kept on all Advisory Council meetings and shall be made available to the public on request. The Office of Public Information in the SDE announces all Advisory Council meetings, including the agenda and location, to the public. All Council meetings and agenda items are announced enough in advance to afford interested parties a reasonable opportunity to attend. Assistance for individuals with disabilities, including interpreters and other necessary services, shall be provided at Advisory Council meetings for members or participants. The Advisory Council members shall serve without compensation, but the SDE shall reimburse members for reasonable and necessary expenses their incur in attending meetings and performing their duties. The SDE shall use funds under Section 300.620 of the IDEA regulations for these purposes.

S. Policies and Procedures on Use of Funds

The following policies and procedures have been established by the SDE to ensure that funds are utilized in accordance with the provisions of Part B of the IDEA.

1. Procedure for Allocations

a. Of the total allocation under Part B of the IDEA, the SDE shall retain a sum that is not to exceed the maximum state set-aside specified in the grant award notification.

b. Funds equal to the amount specified in the grant award notification shall be utilized in the administration of the IDEA. This amount, however, shall be subtracted from the state set-aside retained by the SDE.

c. The SDE shall utilize a portion of the set-aside funds for direct and support services, for assisting LEAs in meeting personnel shortages, and for the administrative costs of monitoring and complaint investigation to the extent that these costs exceed expenditures for the same purposes during FY 1985, as determined by the U.S. Department of Education. Funds in the amount of \$131,194.58 were expended during FY 1985.

d. The minimum amount specified in the grant award notification shall be made available as entitlements to school districts during the fiscal year of the allocation, provided that the requirements of Sections 614 and 615 of Part B of the IDEA are met. Additional funds from the state set-aside that are not needed to support activities will be added to this amount.

e. Entitlements during any fiscal year in which the SDE receives an allocation under Part B of the IDEA shall be made available to districts/agencies in accordance with 34 C.F.R. § 300.712.

2. Schedule for Entitlements

a. The SDE shall approve appropriate applications for funds under the IDEA only after the SDE has received the appropriate federal approval of the State's policies and procedures.

b. The SDE shall approve the application of a school district when the SDE has determined that the application meets the requirements of the IDEA and provides satisfactory assurance that procedural safeguards are established.

c. The SDE shall make entitlement awards to districts/agencies with approved applications each year following receipt of notification of federal approval of the appropriate policies and procedures and receipt of the grant document pursuant to said approval.

d. If the application submitted to the SDE is not approvable, the SDE shall permit the applicant to make necessary changes within a specified time frame. Should the revised application still be unapprovable, applicants will be permitted to submit another revised application. Should this second revised application be unapprovable, a hearing on the school district application may be held. In no case shall the SDE reserve the entitlement longer than one hundred eighty calendar days from the date of federal approval of the appropriate policies and procedures. Any monies thus forfeited shall be added to recovered funds.

3. Procedures for Reallocation

Reallocations shall be only for the purposes of reissuing funds under the IDEA to school districts in the event that the SDE should recover monies as set forth in these policies and procedures:

a. By March 30 of the carryover funding year, the school district must notify the SDE of the amount of the entitlement that will not be expended by the school district by the end of the entitlement period. The only acceptable reason for not expending all of the entitlement shall be extenuating circumstances or the attainment of full-service goals.

b. The sum of these recovered monies shall be added to any other recovered monies under the entitlement program and/or direct service programs provided recovery is made by July 1 of the carryover year.

116 FINAL REGULATIONS

c. Utility of recovered funds derived from unexpended entitlement amounts and/or any funds recouped for improprieties shall be reallocated to all eligible agencies on a pro rata basis. This reallocation shall be made within the limitation of the funding period. Should recovery follow the expiration date of the entitlement, all recovered funds shall revert to the federal government.

T. Specific guidelines required by the IDEA are stated in the *Policies and Procedures*, and the guidance documents *Child Find*, *Confidentiality*, *Due Process*, *Individualized Education Programs/Least Restrictive Environment*, *Surrogate Parents*, and *Mediation*. These documents were developed by the SDE=s Office of Exceptional Children and may be accessed through that office.

Fiscal Impact Statement:

It is estimated there will be increased costs of \$1,600.00 to the State or its political subdivisions.

Document No. 2514
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority 59-149-10
Statutory Authority 59-104-20

62-1000-1040. LIFE Scholarship and Palmetto Fellows Scholarship Appeals Regulations

Synopsis:

In June 1988, the Palmetto Fellow Scholarship Program was signed into law under Act 629, the Cutting Edge Legislation to foster scholarships among the state=s post-secondary students and retain outstanding South Carolina High School graduates in the State through awards based on scholarship and achievement. On June 19, 1998 under House Bill 4535, Legislative Incentives for Future Excellence (LIFE) Scholarships, was signed into law to cover the cost of attendance up to specified limits, to eligible resident students attending eligible public or independent two-year and four-year institutions of higher learning in the State of South Carolina.

Both Statutes require that the Commission on Higher Education promulgate regulations and have administrative responsibility over the LIFE and Palmetto Fellows Scholarship programs. The Commission on Higher Education will promulgate regulations for the process in which a student who has been denied scholarship eligibility may file an appeal.

The Appeals Regulations will define the process, criteria, and circumstances in which a student may file an appeal. The regulations will provide students and administrators a timely, equitable, and consistent appeals process.

Instructions:

Add new R.62-1000 through 1040, LIFE and Palmetto Fellows Scholarship Appeals Regulations to Chapter 62 regulations.

Text:

62-1000. Program Definitions

A. AAppeal≡ is defined as an instance in which an extenuating circumstance causes a student enrolled in college to fail to meet the academic requirements (cumulative grade point average and/or credit hours) of earning or renewing a

LIFE Scholarship or renewing a Palmetto Fellows Scholarship.

B. A **Extenuating Circumstance** is defined as a situation that involves a serious health condition of the student, death or serious health condition of an immediate family member, or a traumatic event.

C. An **Immediate Family Member** is defined as the spouse, great-grandparents, grandparents, parents or legal guardians, brothers, sisters, or children of either the student or the student's spouse.

D. A **Serious Health Condition** is defined as an illness, injury, impairment, or physical or mental condition that involves: (1) Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility; or (2) Any period of incapacity requiring absence from classes for more than five consecutive class days that also involves continuing treatment by (or under the supervision of) a health care provider; or (3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity that would adversely affect the academic performance of the student.

E. A **Traumatic Event** is defined as a sudden, uncontrollable event which adversely affects the student's academic performance, such as a natural disaster (i.e., earthquake, hurricane, tornado, fire, etc.), divorce, rape, or any other event deemed traumatic/extraordinary by the Appeals Committee.

62-1005. Identifying Eligibility for Scholarship Renewal

A. **LIFE Scholarship:** Each institution is responsible for notifying students about financial aid awards through normal institutional notification procedures, such as personal financial award accounts within the institutional system available for all students to review; telephone notification; award letters; and student bills. Therefore, each student awarded the LIFE Scholarship must make herself/himself aware of the institutional notification process and her/his LIFE Scholarship eligibility. If a LIFE Scholarship recipient finds that she/he is ineligible and would like to file an appeal, appeal applications must be available in the institutional financial aid office and the Commission on Higher Education.

B. **Palmetto Fellows Scholarship:** Institutions must submit an electronic roster (either Excel or ASCII format) of all students who do not meet the continued eligibility requirements to the Commission on Higher Education. The roster shall include the name, social security number, and permanent home address for each student. The Commission must receive the roster no later than two weeks after the completion of summer school.

The Commission will notify each Palmetto Fellow in writing of the discontinuation of their Palmetto Fellows Scholarship. The Commission will provide information about the opportunity for appeal and also an appeals handbook. If a student wishes to submit an appeal regarding the discontinuation of the Palmetto Fellows Scholarship, then he or she must follow the approved appeals process.

62-1010. Filing an Appeal

An appeal must be filed with the Commission on Higher Education by no later than October 15th of the academic year that scholarship aid is requested. The student must complete an Application for Appeal, attach a letter requesting an appeal and describing extenuating circumstances, and attach any other supporting documentation. The student must also request that an official academic transcript(s) be mailed to the Commission on Higher Education in an official sealed envelope. The Commission on Higher Education will only allow a student to submit one appeal each academic year.

118 FINAL REGULATIONS

Extenuating Circumstances

Extenuating circumstances are the following situations: serious health condition of the student; death or serious health condition of an immediate family member; or traumatic/extraordinary event. If the student=s situation does not meet any of the above criteria for an extenuating circumstance, then the student cannot submit an appeal. A traumatic event does not include college adjustment issues, such as homesickness, problems with roommates, problems with the faculty or staff at the college or university, difficult course-load, dependent care or transportation problems, etc. This is not an exhaustive list. The Appeals Committee may deem other issues as inappropriate for appeal.

62-1020. Supporting Materials

Students are responsible for providing appropriate supporting documentation with their appeal such as: physician=s report detailing duration and extent of serious health condition and any recommendations made regarding school attendance; letter from a college or university official; hospital invoice; and/or any other relevant documentation, which will substantiate the appeal.

62-1025. Appeals Committee

The Appeals Committee will be comprised of: two representatives from the staff of the S.C. Commission on Higher Education; one representative from the board of the Commission on Higher Education; three institutional representatives of which one will be from a public senior college, one from a private senior college, and one from a two-year/technical college; one representative from the General Assembly or legislative staff member; one private or public high school guidance counselor representative; and one representative from the business community.

62-1030. Approval of Appeals

If an appeal is granted to a student who does not have the required cumulative 3.0 grade point average or the required number of credit hours, he or she may receive scholarship funding for the academic year. After the completion of the academic year in which the appeal was granted, the student is expected to comply with all eligibility requirements in order to receive scholarship funding for the next academic year.

62-1035. Notification Process for Appeals Decisions

Once the decision regarding an appeal has been determined, the Appeals Committee will notify both the student and the institution in writing. Decisions are expected to be rendered by January 1.

62-1040. Appeals Decision

The Appeals Committee=s decision is final.

Fiscal Impact Statement: Staff anticipate no additional financial impacts.

Document No. 2553
DEPARTMENT OF INSURANCE
 Chapter 69

Statutory Authority: 1976 Code Sections 38-3-110, et seq., 1-23-110, et seq., 38-9-180, et seq.

Annuity Mortality Tables For Use In Determining Reserve Liabilities For Annuities

Synopsis:

The regulation proposes to amend Regulation 69-37, Annuity Mortality Tables For Use In Determining Reserve Liabilities For Annuities, so as to update the mortality tables to better reflect current experience for all annuity products issued in South Carolina.

Instructions: Strike existing Regulation 69-37 in its entirety and replace with the language provided.

Text:

R. 69-37. Annuity Mortality Tables For Use In Determining Reserve Liabilities For Annuities

Table of Contents

- Section 1. Authority
- Section 2. Purpose
- Section 3. Definitions
- Section 4. Individual Annuity or Pure Endowment Contracts
- Section 5. Group Annuity or Pure Endowment Contracts
- Section 6. Application of the 1994 GAR Table
- Section 7. Separability

Section 1. Authority

This regulation is promulgated by the Director of Insurance pursuant to Section 38-9-180 of the South Carolina Code.

Section 2. Purpose

The purpose of this regulation is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table Aa, the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

Section 3. Definitions

A. As used in this regulation A1983 Table Aa means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

B. As used in this regulation A1983 GAM Table means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

C. As used in this regulation A1994 GAR Table means that mortality table developed by the Society of Actuaries Group

120 FINAL REGULATIONS

Annuity Valuation Table Task Force. The 1994 GAR Table is included in the report on pages 865-919 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).

D. As used in this regulation AAnnuity 2000 Mortality Table \cong means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Table is included in the report on pages 211-249 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).

Section 4. Individual Annuity or Pure Endowment Contracts

A. Except as provided in Subsections B and C of this section, the 1983 Table Aa \cong is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1979.

B. Except as provided in Subsection C of this section, either the 1983 Table Aa \cong or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1986.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2001.

D. The 1983 Table Aa \cong without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2001, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- (2) Settlements involving similar actions such as workers= compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

Section 5. Group Annuity or Pure Endowment Contracts

A. Except as provided in Subsections B and C of this section, the 1983 GAM Table, the 1983 Table Aa \cong and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after January 1, 1979 under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1986 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2001 under a group annuity or pure endowment contract.

Section 6. Application of the 1994 GAR Table

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

Section 7. Separability

If any provision of this regulation or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of its provisions to other persons or circumstances shall not be affected.

Fiscal Impact Statement:

The amendment to this regulation will not result in substantial economic impact; therefore, no additional state funding is requested.

Document No. 2521

JOBS B ECONOMIC DEVELOPMENT AUTHORITY

CHAPTER 68

Statutory Authority: S.C. Code Ann. § 43-41-90

68-10(B), Loan Eligibility Requirements.

Synopsis:

The South Carolina Jobs-Economic Development Authority proposes to repeal Regulation 68-10(B), ALoan Eligibility Requirements.≡ Regulation 68-10(B) currently prohibits the South Carolina-Jobs Economic Development Authority from making economic development bond loans or Community Development Block Grant loans to commercial and restaurant establishments, except under certain specifically defined circumstances.

The purpose of repealing Regulation 68-10(B) is to allow South Carolina-Jobs Economic Development Authority to finance additional types of projects, provided that such projects are within the scope of the Authority=s authorizing legislation and the South Carolina Constitution.

Summary of Assessment Reports:

The repeal of Regulation 68-10(B) will not have a substantial economic impact. Therefore, pursuant to Sections 1-23-110(A)(2) and 1-23-115(B) of the South Carolina Code of Laws of 1976, as amended, an assessment report is not required.

Instructions:

Repeal Regulation 68-10(B), ALoan Eligibility Requirements.≡

Text:

Regulation 68-10(B) is repealed.

Fiscal Impact Statement:

The repeal of Regulation 68-10(B) is not expected to impose any costs on the State of South Carolina or its political subdivisions.

122 FINAL REGULATIONS

Document No. 2596
DEPARTMENT OF LABOR, LICENSING AND REGULATION
COMMISSIONERS OF PILOTAGE FOR THE PORT OF CHARLESTON
CHAPTER 136
Statutory Authority: 1976 Code Sections 54-15-120; 54-15-140

Synopsis:

The Commissioners of Pilotage for the Port of Charleston is amending Regulation 136-020C(1) by increasing the deep draft limitations on initial branches from 28 feet to 31 feet.

Instructions: Amend current Regulation 136-020C(1), by amending the deep draft limitations as it appears in the text below.

Text:

Regulation 136-020. Short Branch Qualification.

The various tonnage and draft limitations for each short branch shall be:

- (1) Initial (first) short branch (six months) Ψ35,000 Gross Registered Tons and 31 feet deep draft.

Fiscal Impact Statement:

There will be no cost incurred by the State or any of its political subdivisions.

Document No. 2550
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS
CHAPTER 81
Statutory Authority: 1976 Code Sections 40-47-20; 40-1-70

Synopsis:

The Board of Medical Examiners is proposing to amend Regulation 81-110 to permit highly qualified physicians who practice under an academic license to supervise nurse practitioners.

Instructions: Amend current regulations, by amending Regulation 81-110 as it appears in the text below

Text:

Criteria for Physician Supervision of Nurses in Extended Role.

Any physician who supervises a Registered Nurse practicing in the extended role must be licensed in South Carolina, in possession of a permanent, active, unrestricted license to practice medicine in this State or, alternatively, be in possession of an active unrestricted academic license to practice medicine in this state and hold an appointment at the level of Associate Professor or above at an approved school of medicine. Such physicians must be currently engaged in the practice of medicine.

When the sponsoring physician is more than forty-five (45) miles from the nurse practitioner, when a physician is

supervising more than three (3) nurse practitioners, or when otherwise deemed necessary, the State Board of Medical Examiners will review the nature and quality of physician supervision, on an individual basis, to insure that the public health, safety and welfare are protected. In making this evaluation, the Board's review will include, but not be limited to, the following criteria:

1. The training and practice experience of the physician;
2. The competency of the physician to supervise the "delegated Medical Acts" performed by the nurse;
3. The nature and complexity of the "delegated Medical Acts" being performed;
4. The geographic proximity of the supervising physician to the nurse practicing in the extended role;
5. The manner in which the physician intends to monitor the extended role practice and the extent to which the physician is available for consultation and advice; and
6. The number of other extended role nurses and/or Physician Assistants the physician is supervising.

It is the physician's responsibility to insure that any "delegated Medical Act" being performed by the nurse is set forth in an approved written protocol, as defined by applicable law.

A copy of this approved written protocol, dated and signed by the nurse and the physician, shall be provided to the Board by the physician supervisor within seventy-two (72) hours of request by the Board.

The supervising physician shall be responsible and accountable to the Board for compliance with this regulation. Any violation of this regulation shall be considered an act of professional misconduct and subject the physician to sanctions pursuant to Section 40-47-200. A Physician Assistant is not authorized to supervise a nurse practicing in the extended role.

Fiscal Impact Statement: No additional funds will be incurred by the State or any political subdivision.

Document No. 2578

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
STATE BOARD OF NURSING**

Chapter 91

Statutory Authority: 1976 Code Sections 40-33-270 and 40-1-70(9)

Synopsis:

The State Board of Nursing is drafting a regulation that would require licensed nurses to be clearly identified as officially licensed or recognized by the Board of Nursing.

Instructions: Amend current Regulations, by amending Regulation 91-9.5 as it appears in the text below.

Text:

91-9.5. Official Identification.

A licensed nurse must clearly identify himself or herself as officially licensed or recognized by the Board of Nursing. A licensed nurse shall wear a clearly legible identification badge or other adornment at least one inch by three inches in size bearing the nurse's name and title as officially licensed or recognized.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any of its political subdivisions.

124 FINAL REGULATIONS

Document No. 2624
DEPARTMENT OF LABOR, LICENSING AND REGULATION
CHAPTER 71

Statutory Authority: 1976 Code Section 41-15-210
Article I, Subarticles 6 and 7
Occupational Safety and Health Standards

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, hereby promulgates the following changes to South Carolina Regulations:

In Subarticle 6 (General Industry & Marine Terminals):

1. Minimum standard for Bloodborne pathogens shall be 1910.1030, as amended in FEDERAL REGISTER, Volume 66, Number 12, page 5325, dated January 18, 2001.

The compliance date for this amendment is June 17, 2001.

2. Minimum standard for Cotton Dust shall be 1910.1043, as amended in FEDERAL REGISTER, Volume 65, Number 236, page 76567, dated December 7, 2000. The compliance date for this amendment is June 5, 2001.

In Subarticle 7 (Construction):

Minimum standard for Steel Erection shall be 1926.Subpart R with related corrections to 1926.500 as amended in FEDERAL REGISTER, Volume 66, Number 12, pages 5265 through 5280, dated January 18, 2001. The compliance date for this amendment is September 16, 2001.

Copies of these final regulation changes can be obtained or reviewed at the South Carolina Department of Labor, Licensing and Regulation during normal business hours by contacting the Public Information Office at (803) 896-4380.