USDB Special Education Policies and Procedures Manual

Alternative SLD Eligibility Method

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I. General Provisions

I.A. Purposes (34 CFR § 300.1; Rules I.A.)

1. The primary purposes of this Utah Schools for the Deaf and Blind's (USDB) policies and procedures manual, consistent with Utah Code Annotated (UCA) Title 53E, Chapter 7, Part 2, Special Education Program; and the Individuals with Disabilities Education Improvement Act (IDEA), as amended; are:
    a. To ensure that all students with disabilities ages 3 through 21 in Utah, including students with disabilities who have been suspended or expelled from school and students who have not graduated from high school with a regular high school diploma, have available to them a free appropriate public education
    b. (FAPE) that emphasizes special education and related services, as specified on an Individualized Education Program (IEP) designed to meet their unique needs and prepare them for further education, employment, and independent living;
    c. To ensure that the rights of students with disabilities and their parent(s) are protected;
    d. To ensure that State standards are established for the provision of a FAPE to students with disabilities, as defined in these Rules;
    e. To assess and ensure the effectiveness of efforts to educate students with disabilities.

I.B. Definitions as Used in These Rules (34 CFR §§ 300.4–300.45; Rules I.E.)

1. USDB has adopted all applicable definitions as found in Rule I.E.1-59.

I.C. Full Educational Opportunity Goal (34 CFR § 300.109; Rules IX.A.2.d.(2)(c))

1. USDB provides a free appropriate public education (FAPE) to all eligible students with disabilities in conformity with the requirements of the Rules and the IDEA. USDB hereby affirms the goal of providing a full educational opportunity to all students with disabilities determined eligible for special

education and related services, of the ages served by USDB, in accordance with all of the timeline requirements of the IDEA.

2. USDB follows all necessary requirements in the development and delivery of an individualized education program (IEP) for eligible students. Placement in the least restrictive environment (LRE) will be implemented to the maximum extent appropriate for students with special needs. USDB is a unique entity in the State of Utah that provides support for students with hearing or vision loss or both throughout the State of Utah and in self-contained schools for urban regions to address the unique needs of students with a sensory loss to ensure those students receive special education and related services appropriate to their needs.

I.D. Methods of Ensuring Services (34 CFR § 300.154; Rules IX.A.2.d.(2)(m))

3. USDB ensures each eligible student with disabilities enrolled in the school receives the services included in the IEP through a systematic process of IEP internal file reviews and monitoring of service delivery by USDB personnel. For more detailed information about USDB services please see the USDB Technical Assistance Manual.

II. Identification, Location, and Evaluation

II.A. **Child Find System (34 CFR §§ 300.109, 300.111; Rules II.A.)**

1. USDB In accordance with the requirements of Part B of the IDEA and with the Rules, has developed policies and procedures to ensure that all students with disabilities with a hearing or vision loss in the State of Utah, including students with additional disabilities birth through 21 years of age and those attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated in collaboration with the LEA of residence. These policies and procedures include a practical method for determining which students are currently receiving needed special education and related services and provide a process to reevaluate those who are found eligible for USDB services within the three-year timeframe.
2. Students with disabilities come to USDB through their local education agency (LEA). The LEAs are responsible for Child Find. USDB works closely with each LEA to ensure that USDB is involved with any student identified with a hearing or vision loss. Once USDB becomes the designated LEA they are responsible for any continuing Child Find activities.
3. As a statewide agency, USDB will participate in Child Find activities by assisting LEAs. In cooperation with a LEA, USDB conducts the following procedures to ensure that students suspected of having hearing or vision loss or both are identified and located: Finding students with hearing or vision loss or both who have been receiving needed special education or special education and related services.
4. The qualification for services includes questions about whether a student has received special education or special education and related services in the previous school or educational program and if the student has a hearing or vision loss.
5. The LEA of residence is considered the gateway for services and possible enrollment at USDB. Parents are asked during registration at the LEA if the student has a hearing or vision loss and if the student received any services beyond the regular program in the previous school. If parents respond in the

affirmative, a phone contact is made with the previous school to locate the special education records and USDB is notified as to the potential need of a student with a hearing or vision loss.

6. USDB follows all the procedures detailed on the In-State and Out-of-State Transfer Student Checklists of the USBE and Board Rule as it pertains to USDB.
7. In identifying and locating students who are suspected of having a hearing or vision loss but have not been previously identified or determined eligible for special education or special education and related services, USDB implements the following procedures in cooperation with LEAs:
    a. Training of other LEAs on the Child Find obligation and how to be alert for observed behaviors that suggest a suspected disability with hearing or vision or both.
    b. Letters sent to community agencies, homeless shelters, and licensed daycare centers regarding locating children with disabilities.
    c. Notice on the USDB website of the referral procedures and of the availability of services for eligible students with hearing or vision loss or both.
    d. Ongoing communications with health care providers.
    e. Annual consultation with private schools concerning the identification of eligible students with disabilities.
8. USDB's Part C Parent Infant Program Early Intervention Provider (PIP), collaborates and coordinates through an inter-agency agreement with the Utah Health Department Early Intervention Provider, Baby Watch, to ensure that students with disabilities are identified, located, evaluated, and have FAPE available by age three (3), if eligible.
9. The requirements of this section apply to:
    a. Highly mobile students with disabilities (such as students who are migrant and experiencing homelessness) (34 CFR § 300.111(c)(2)).
    b. Students who have been suspended or expelled from school (34 CFR § 300.101(a)).

c. Students who have not graduated from high school with a regular high school diploma (34 CFR § 300.102(a)(3)(iii)).

d. Students who are suspected of being a student with a disability under the Rules and who are in need of special education and related services, even though they are advancing from grade to grade (34 CFR § 300.111(c)(1)).

e. Students who are homeschooled and students enrolled in private schools within the school district's boundaries.

f. Students in State custody/care.

g. Students in nursing homes.

10. The determination that a student is a "student with a disability" under these Rules must be made on an individual basis, by a group made up of the parent or student who is an adult and school personnel determined by the student's LEA.

11. Major components of the child find system include:

    a. USDB support of LEA implementation, coordination, and tracking of child find activities of students with a hearing or vision loss, including students who are home schooled and students enrolled in private schools within the school district's jurisdiction (34 CFR § 300.131).

    b. USBE staff provision of ongoing technical assistance to LEAs, private schools, and other State agencies in implementing the child find system.

    c. Implementation of the statewide data collection system for reporting student information, including Federal student count (34 CFR §§ 300.132, 300.640– 641) and the data requirements found in the Rules VI.B.3., which includes that:

    d. USDB collaboration and coordination with State and Local Department of Health, which has responsibility for providing early intervention services for infants and toddlers with disabilities, ages birth through two, under Part C of the IDEA (Interagency Agreement).

12. The collection and use of data to meet the requirements of this section are subject to the confidentiality of information provisions under these Rules and R277-487.

II.B. REFERRAL (34 CFR § 300.301; RULES II.B.)

1. Consistent with the consent requirements in Rules II.C., when either a parent, staff member associated with USDB or the student who is an adult request an intial evaluation, USDB is available to assist the LEA of residence in completing an initial evaluation to determine if a student is a student with a hearing or vision loss under Part B of the IDEA and these Rules. Upon receipt of a request for an evaluation, USDB must respond within a reasonable timeframe.
2. If a student resides in a district with less than 3% of the student population in the state and does not have a documented hearing loss, a hearing screening must be completed by the LEA of residence. After documenting two failed hearing screenings, USDB may assist with a full evaluation of the student.
3. If the student resides in a district with more than 3% of the student population in the state, the student's LEA is responsible for full compliance.
4. The USDB audiology team is available to consult with any LEA. Use this link to refer the student for further audiological evaluation.
5. An LEA should consult with USDB about all available options for a student with a documented hearing or vision loss.
6. A representative from the USDB should be in attendance at the initial IEP for any student with a hearing or vision loss or both. USDB is available to assist LEAs as needed for students with a hearing or vision loss.
7. If during the initial IEP meeting USDB is determined to be the appropriate placement, the results of the interventions, accompanying data, complete student file and a completed referral form are given to USDB, who reviews the information and determines if further evaluation is needed. USDB will be responsible to conduct any additional evaluations.
8. USDB shall provide an initial special education assessment for children who enter the custody of the Division of Child and Family Services (DCFS), upon request by that division and the LEA obtains appropriate parental consent for the evaluation for children whose school records indicate that they may have disabilities requiring special education services.

II.C. **Parental Consent (34 CFR § 300.300; Rules II.C.)**

1. Parental consent for initial evaluation.

    a. USDB works collaboratively with the LEA to determine eligibility for USDB services. If an LEA has requested the assistance of USDB in the evaluation, USDB will ensure that consent from the parent or student who is an adult is obtained prior to initiating any evaluation.

    b. The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability under the Rules must, after providing prior written notice to the parent or student who is an adult, obtain informed consent, consistent with Rules I.E.9, from the parent of the student or the student who is an adult before conducting the evaluation.

        (1) Consent from a parent or student who is an adult for initial evaluation must not be construed as consent for initial provision of special education and related services.

        (2) USDB must make reasonable efforts to obtain informed consent from the parent or student who is an adult for an initial evaluation to determine whether the student is a student with a hearing or vision loss.

        (3) When conducting psychological evaluations, USDB must implement the parental or student who is an adult consent requirements of UCA 53E-9-203 (Student Privacy and Data Protection).

    c. For initial evaluations only, if the student is a ward of the State and is not residing with the student's parent(s), USDB is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

        (1) Despite reasonable efforts to do so, USDB cannot discover the whereabouts of the parent(s) of the student;

        (2) The rights of the parent(s) of the student have been terminated in accordance with State law; or

        (3) The rights of the parent(s) to make educational decisions have been subrogated by a judge in accordance with State law and consent for

an initial evaluation has been given by an individual appointed by the judge to represent the student.

d. If the parent(s) of a student or a student who is an adult enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or fails to respond to a request to provide consent, USDB may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards or the due process procedures in Section IV of these Rules.

(1) USDB does not violate its obligation under the child find provisions of these Rules if it declines to pursue the evaluation by utilizing the procedural safeguards or the due process procedures.

2. Parental consent for services.

a. USDB is responsible for making a FAPE available to a student with a disability, focusing specifically on hearing or vision loss or both if the IEP, which included a representative of USDB, the LEA and the parent of the student or student who is an adult, determined USDB was the most appropriate placement.

b. USDB must obtain informed consent from the parent(s) of the student or student who is an adult before the initial provision of special education and related services to the student.

c. USDB must make reasonable efforts to obtain informed consent from the parent(s) or student who is an adult for the initial provision of special education and related services to the eligible student with hearing or vision loss or both.

d. If the parent(s) of a student or student who is an adult fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, USDB:

(1) May not use the procedures in of these Rules IV., including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student;

(2) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which USDB requests consent; and

(3) Is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which USDB requests such consent.

e. If, at any time subsequent to the initial provision of special education and related services, the parent(s) of a student or student who is an adult revokes consent in writing for the continued provision of special education and related services, USDB:

(1) May not continue to provide special education and related services to the student but must provide prior written notice in accordance with Rules IV.D. before ceasing the provision of special education and related services;

(2) May not use the procedures in Rules IV., including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student;

(3) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which USDB requests consent; and

(4) Is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which USDB requests such consent (34 CFR § 300.300).

3. Parental consent for reevaluations.

a. USDB must obtain informed parental or student who is an adult consent prior to conducting any reevaluation of a student with a disability.

b. If the parent or student who is an adult refuse to consent to the reevaluation, USDB may, but is not required to, pursue the reevaluation by

using the dispute resolution procedures provided in the procedural safeguards, and including mediation or due process procedures.

c. USDB does not violate its obligation under child find if it declines to pursue the reevaluation.

d. The informed parental or student who is an adult consent need not be obtained if the LEA can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

e. The student's parent or the student who is an adult has failed to respond.

4. Other consent requirements.

a. Parental or student who is an adult consent is not required before:

(1) Reviewing existing data as part of an evaluation or a reevaluation; or

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

b. USDB may not use a parent's or student who is an adult refusal to consent to one service or activity under Rules II.C.1., II.C.2., or II.C.3., to deny the parent or student any other service, benefit, or activity of the LEA, except as required by this part.

c. If a parent of a student or an student who is an adult who is home schooled or placed in a private school by the parent(s) or student who is an adult at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent or student who is an adult fails to respond to a request to provide consent, the LEA may not use the consent override procedures (described in Rules II.C.1.c., II.C.3.), and USDB is not required to consider the student as eligible for special education and related services.

d. To meet the reasonable efforts requirement in Rules II.C.1.a.2., II.C.1.b.1., II.C.2.b., and II.C.3.d.1., USDB must document its attempts to obtain parental or student who is an adult consent using the procedures in Rules III.G.3.

e. Unless parent(s) or the student who is an adult revoke consent for special education and related services or refuse consent for initial placement, disagreements regarding the provision of IEP services should be resolved by the IEP Team and result in a completed IEP which includes all components necessary for the provision of FAPE.

II.D. INITIAL EVALUATION (34 CFR § 300.301; RULES II.D.)

1. The LEA of residence must conduct a full and individual initial evaluation to determine whether a student is a "student with a disability" under Part B of the IDEA and the Rules, and to determine the educational needs of the student.
2. In collaboration with the LEA, USDB will comply with all requirements for initial evaluations.
3. The initial evaluation:
    a. Must be conducted within 45 school days of receiving parental or student who is an adult consent for the evaluation, unless:
        (1) The initial evaluation is requested by the Division of Child and Family Services (DCFS) and USDB obtains appropriate consent for the evaluation, in which case USDB shall provide an initial special education evaluation to an individual who enters DCFS custody if DCFS suspects the individual may be an eligible student within 30 days after the day on which DCFS makes the request (UCA 53E-7-207).
            (a) USDB may refuse to conduct an evaluation described in the Rules [II.D.2.] a. (1) if USDB reviews the relevant data regarding the individual and, within ten days after the day on which USDB received the request described in the Rules [II.D.2.] a.(1), gives the DCFS prior written notice of refusal to evaluate.
    b. Must consist of procedures to determine:
        (1) If the student is a student with a disability; and
        (2) The educational needs of the student.
4. The timeframe shall not apply to USDB if:

a. The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or

b. The student who is an adult repeatedly fails or refuses to participate in evaluation activities; or

c. A student enrolls in USDB after the relevant timeframe has begun, and prior to a determination by the student's previous LEA as to whether the student is a student with a disability.

d. The exception in Rules II.D.3.c. applies only if the LEA and USDB is making sufficient progress to ensure a prompt completion of the evaluation, and the parent or student who is an adult and USDB agree to a specific time when the evaluation will be completed.

II.E. Screening for Instructional Purposes (34 CFR § 300.302; Rules II.E.)

1. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. Results of screenings should be considered by the LEA of residence for child find purposes.

II.F. Evaluation Procedures (34 CFR § 300.304; Rules II.F.)

1. USDB has established and implemented procedures that meet the evaluation requirements of Part B of the IDEA and the Rules as follows:

   a. In conducting the evaluation, USDB must:

      (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by a parent or student who is an adult, that may assist in determining:

         (a) Whether the student is a student with a disability; and

         (b) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or, for a student in preschool, to participate in appropriate activities);

(2) Not use any single procedure as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors USDB must consider the publication date and continued validity of assessments in use when new editions are published.

(4) USDB must ensure that assessments and other evaluation materials used to assess a student:

(a) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(b) Are provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(c) Are selected to assess the specific areas of concern identified by the assessment/evaluation group, including the parent(s) or student who is an adult;

(d) Are used for the purposes for which the assessments or measures are valid and reliable;

(e) Are selected and administered by trained and knowledgeable personnel based upon the specific assessment's requirements; and

(f) Are administered and interpreted in accordance with any instructions and administrator requirements provided by the producer of the assessments and the Standards for Educational and Psychological Testing (AERA, APA, NCME, 2014).

(i) USDB must ensure and document that all evaluators meet the assessment publishers' administrator/interpreter/user requirements, (e.g., appropriate degree, higher education

coursework in tests and measures, and supervised clinical experiences/practica).

(ii) USDB shall provide documentation to USBE staff upon request.

(5) USDB must ensure that:

(a) Assessments 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.

(b) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment 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).

(c) The administration of psychological testing and the evaluation or assessment of personal characteristics, such as intelligence (e.g., cognitive, IQ), personality, abilities, interests, aptitudes, and neuropsychological functioning are only administered and interpreted by personnel who have been trained and fully meet the administrator/ interpreter/user qualifications of the test publisher (e.g., appropriate degree, higher education coursework in tests and measures, and supervised clinical experiences/practica).

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

(e) Assessments of students with disabilities who transfer from another LEA to USDB in the same school year are coordinated with those students' prior and subsequent schools, as necessary

and as expeditiously as possible, to ensure prompt completion of full evaluations.

(f) In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(g) Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the student are provided.

b. The USDB is available to LEAs for assessments of students with visual impairment and hearing loss, as well as professional learning on appropriate administration of assessments, and procedures to ensure appropriate interpretation of assessments (R277-800-7).

II.G. **Reevaluation Procedures (34 CFR § 300.303; Rules II.G.)**

1. USDB must ensure that a reevaluation of each student with a disability is conducted:

   a. If USDB determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

   b. If the student's parents or student who is an adult or teacher requests a reevaluation.

2. A reevaluation:

   a. May occur not more than once a year, unless the parents or student who is an adult and USDB agree otherwise; and

   b. Must occur at least once every three years, unless the parents or adult student and USDB agree that a reevaluation is unnecessary as there are data available to continue eligibility and determine the educational needs of the student. When the parents or student who is an adult and LEA agree that a reevaluation is unnecessary, the group must document data

reviewed and used in an evaluation report and complete an eligibility determination.

II.H. Additional Requirements for Initial Evaluations and Reevaluation Procedures (34 CFR § 300.305; Rules II.H.)

1. As part of any initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must:
   a. Review existing evaluation data on the student, including:
      (1) Evaluations and information provided by the parent(s) of the student or the student who is an adult;
      (2) Current classroom-based, local, or State assessments, and classroom-based observations; and
      (3) Observations by teachers and related services providers; and
   b. On the basis of that review, and input from the student's parent(s) or the adult student, identify what additional data, if any, are needed to determine:
      (1) Whether the student is a student with a disability and the educational needs of the student; or, in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;
      (2) The present levels of academic achievement and related developmental needs of the student;
      (3) Whether the student needs special education and related services; or, in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
      (4) 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 the IEP of the student and to participate, as appropriate, in the general education curriculum.
2. The IEP Team and other qualified professionals, as appropriate, may conduct its review of existing data without a meeting.

3. USDB must administer such assessments and other evaluation measures as may be needed to produce the data needed to determine continuing eligibility.
4. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the LEA must notify the student's parent(s) or student who is an adult of:
    a. That determination and the reasons for the determination; and
    b. The right of the parent(s) or student who is an adult to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.
5. USDB is not required to conduct the assessment for reevaluation described in Rules II.H.4.b unless requested to do so by the student's parent(s) or the student who is an adult.
6. Evaluations before change in eligibility.
    a. USDB must evaluate a student with a disability before determining that the student is no longer a student with a disability.
    b. The evaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law (i.e., age 22).
    c. For a student whose eligibility terminates due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law, USDB must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

II.I. DETERMINATION OF ELIGIBILITY (34 CFR § 300.306; RULES II.I.)

1. Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parents of the student or

the student who is an adult determine eligibility under Part B of the IDEA and the Rules, including:

a. Whether that student is a student with a disability, and

b. The educational needs of the student.

2. USDB shall provide the parents or adult student with a copy of the evaluation report and the documentation of determination of eligibility.

3. A student must not be determined to be a student with a disability:

   a. If the determinant factor for that determination is:

      (1) Lack of appropriate instruction in the science of reading, including the essential components of reading instruction (explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies) (20 USC 6368(3));

      (2) Lack of appropriate instruction in mathematics; or

      (3) Limited English proficiency; and

   b. If the student does not otherwise meet the eligibility criteria.

4. Procedures for determining eligibility and educational need.

   a. In interpreting evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student, USDB must:

      (1) Draw upon information from a variety of sources, such as aptitude and achievement tests, parent or student who is an adult input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

      (2) Ensure that information obtained from all of these sources is 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 the student within 30 calendar days.

II.J. CATEGORICAL DEFINITIONS, CRITERIA, AND ASSESSMENTS (34 CFR § 300.8; 34 CFR § 300.304 34 CFR § 300.306; RULES II.J.)

1. USDB has adopted the criteria and evaluation procedures, by category, for determining eligibility for a student with disabilities under Part B of the IDEA and the Rules II.J.1-13. Including: *Specific Learning Disabilities* (Rules II.J.11.).

    a. Definition (34 CFR § 300.8(C)(10)); Rules II.J.11.a.)

        (1) *Specific learning disabilities* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that affects a student's educational performance.

        (2) *Specific learning disabilities* does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional behavioral disability; or of environmental, cultural, or economic disadvantage.

    b. Procedures for Identifying Students with Specific Learning Disabilities (34 CFR § 300.307; Rules II.J.11.b.).

        (1) USDB has adopted the following method for determining a student's eligibility under the specific learning disability category:

            (a) Alternative Method.

                (i) Another alternative research-based procedure (Patterns of Strengths and Weaknesses (PSW) approved by USDB's school board and submitted to the USBE called the Alternative method that demonstrates that the student does not make sufficient progress to meet State-approved age- or grade-level standards in one or more of the areas identified in the Rules II.J.11.b.(3)(a) (the group must refer to the USBE Specific Learning Disability Eligibility Guidelines when using this method).

        (2) Additional group members (34 CFR § 300.308; Rules II.J.11.b.2).

(a) The determination of whether a student suspected of having a specific learning disability is a student with a disability must be made by the student's parent(s) or student who is an adult and a group of qualified professionals, which must include:

(b) The student's regular teacher; or

(c) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of the student's age; or

(d) For a student of less than school age; an individual qualified by the USBE to teach a student of the student's age; and

(e) At least one person qualified to conduct individual diagnostic examinations of students and interpret the results of those assessments (as per the publisher's assessment administration criteria), such as a school psychologist, speech language pathologist, reading teacher or reading specialist, or special education teacher.

(3) Determining the existence of a specific learning disability (34 CFR § 300.309; Rules II.J.11.b.3.).

(a) The group described may determine that a student has a specific learning disability if:

(b) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skills;

(v) Reading fluency skills;

(vi) Reading comprehension;

(vii) Mathematics calculation;

(viii) Mathematics problem solving.

(c) The group determines that its findings are not primarily the result of:

(i) A visual, hearing, or motor disability;

(ii) Intellectual disability;

(iii) Emotional-behavioral disability;

(iv) Cultural factors;

(v) Environmental or economic disadvantage; or

(vi) Limited English proficiency.

(4) The specific learning disability must adversely affect the student's educational performance.

(5) The student with the specific learning disability must need special education and related services (34 CFR § 300.8(a); Rules II.J.11.b.5).

(6) The group must determine that the specific learning disability is the student's primary disability.

c. Evaluation (34 CFR § 300.309(b)–(c); Rules II.J.11.c).

(1) An evaluation must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion.

(2) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parent(s) or the student who is an adult.

(3) USDB must promptly request parental consent or consent of the adult student to evaluate the student to determine if the student needs special education and related services, and must adhere to the 45-school-day evaluation timeframe, unless extended by mutual written agreement of the student's parent(s) or student who is an adult and a group of qualified professionals:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time as determined by USDB when provided appropriate instruction, and

(b) Whenever a student is referred for an evaluation.

(4) Observation (34 CFR § 300.310(a)–(c); Rules II.J.11.b.4)

(a) USDB must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of concern.

(b) The group must decide to:

(i) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or

(ii) Have at least one member of the group conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent or consent of the student who is an adult is obtained.

(c) If the student is a home-schooled student, USDB may determine how to conduct the observation and who will conduct it.

(d) In the case of a student of less than school age or who is out of school, a group member must observe the student in an environment appropriate for a student of that age.

(5) Specific documentation for the eligibility determination (34 CFR § 300.311; Rules II.J.11.b.5). The group's documentation of the determination of eligibility with a specific learning disability must contain a statement of:

(a) Whether the student has a specific learning disability;

(b) The basis for making the determination, including an assurance that the determination has been made in accordance with Rules II.I.;

(c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) The educationally relevant medical findings, if any; and

(e) Whether the student meets the criteria of (f) below.

(f) Alternative. The use of other alternative research-based procedures (e.g., Patterns of Strengths and Weaknesses (PSW) approved by USDB's board and submitted to the USBE.

(i) USDB uses a method that demonstrates the student does not make sufficient progress to meet State-approved age- or grade-level standards in one or more of the areas identified in the Rules II.J.11.b.(3)(a) when using USDB's local board approved research-based process (the group must refer to the USBE Specific Learning Disability Eligibility Guidelines when using this method).

(ii) The group must:

(A) Review data from multiple sources that examines the student's progress over time in the area(s) of concern when evidence-based instruction has been provided;

(B) Identify the student's strengths and weaknesses that are evident in both the classroom and standardized assessment results;

(C) Using standardized testing, determine a relationship between the student's cognitive processing delays and academic deficits exits;

(D) Consider whether the student's cognitive deficit, from standardized testing, includes both a normative and an intraindividual weakness that is consistent with academic/classroom performance data;

(E) Consider whether the student's cognitive deficit, from standardized testing, includes both a normative and an intraindividual strength that is consistent with academic/classroom performance data; and

(F) Identify that a relationship between the student's cognitive weakness and academic/classroom performance is evident over time.

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional-behavioral disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level;

(7) The requirements of Rules II.D.–H. must be met.

(8) Each group member must certify in writing whether the report reflects the member's conclusion (§ 300.311(b)). If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

III. IEP Development and Service Delivery

III.A. **Individualized Education Program (IEP) (Rules III.A.)**

1. USDB implements the following IEP requirements, including the Least Restrictive Environment (LRE) requirements, consistent with Part B of the IDEA and the Rules, as well as R277-750, R277-800, and R277-801.

III.B. **When IEPS Must Be In Effect (34 CFR § 300.323; Rules III.B.)**

1. At the beginning of each school year, USDB must have an IEP in effect for each student with a disability within its jurisdiction.
2. USDB must ensure that:
    a. A meeting to develop an IEP for a student is conducted within 30 calendar days of a determination that the student needs special education and related services; and
    b. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.
    c. USDB must ensure that the student's IEP is:
        (1) Accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and
        (2) Each teacher and provider is informed of:
            (a) The teacher's specific responsibilities related to implementing the student's IEP; and
            (b) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.
3. Documentation of IEP implementation shall be provided to USBE upon request.

III.C. **Students Who Transfer (34 CFR § 300.323; Rules III.C.)**

1. Transfers within Utah.
    a. In the case of a student with a disability with a current IEP who transfers from one LEA to another within the State within the same school year and enrolls in a new school, USDB, in consultation with the parent(s) or student who is an adult, must provide a FAPE to the student, including services comparable to those described in the previously held IEP, until such time as USDB:
        (1) Adopts the previously held IEP, or
        (2) Develops, adopts, and implements a new IEP that is consistent with Federal regulations and these Rules.
    b. The requirements of 34 CFR § 300.323 also apply for students transferring from an LEA placement to a local juvenile or adult correctional facility or temporary State placement for observation and assessment.
2. Transfers from out of State.
    a. In the case of a student with a disability with a current IEP who transfers LEAs within the same school year, who enrolls in a new school, and who has an IEP that was in effect in another State, USDB, in consultation with the parent(s) or student who is an adult, must provide the student with a FAPE, including services comparable to those described in the previously held IEP, until USDB:
        (1) Conducts an evaluation, if determined to be necessary by USDB; and
        (2) Develops a new IEP, if appropriate, that is consistent with Federal and State law.
    b. The evaluation for eligibility that may be conducted by USDB is considered an initial evaluation, not a reevaluation (71 Federal Register 4668- 82).
3. To facilitate the transition for a student described above:
    a. USDB must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous LEA in which the student was enrolled; and

b. The previous LEA in which the student was enrolled must take reasonable steps to promptly respond to the request from USDB.

c. The LEA transferring the records must keep a copy of the records for at least three years after the transfer as outlined in Rule VIII.S.

4. Experiencing difficulty in obtaining the IEP from the previous LEA does not relieve the LEA where the student is currently enrolled of its obligation to have a current IEP in place for a student who is eligible.

III.D. LEA Responsibility for IEP Meetings (34 CFR § 300.323(C)(1); Rules III.D.)

1. USDB is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability age 3 through 21, consistent with these Rules.
2. A meeting to develop an IEP for a student who is eligible must be conducted within 30 calendar days of a determination that a student needs special education and related services.

III.E. IEP Team Membership (34 CFR § 300.321; Rules III.E.)

1. USDB must ensure that the IEP Team for each student with a disability includes:
   a. The parents of the student or the student who is an adult;
   b. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
   c. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
   d. A representative of USDB who:
      (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
      (2) Is knowledgeable about the general education curriculum; and
      (3) Is knowledgeable about the availability of resources of the LEA.

(4) USDB may designate a USDB member of the IEP Team to also serve as the LEA representative, if the above criteria are satisfied.

e. A representative of USDB and the LEA of residence when the student's placement is at USDB, when the IEP Team is considering placement at USDB, or when the student receives 180 minutes or more of special education and/or related services from USDB.

f. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section of these Rules;

g. At the discretion of the parent or student who is an adult or the LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

h. Whenever appropriate, the student with a disability.

i. The determination of knowledge or special expertise of any individual described in these Rules III.E.6 above must be made by the party (parents or student who is an adult or LEA) who invited the individual to be a member of the IEP Team.

j. If a purpose of the IEP Team meeting is consideration of the postsecondary goals for the student and the postsecondary transition services needed to assist the student in reaching those goals, the LEA must invite the student with a disability to attend the student's IEP meeting. If the student does not attend the IEP meeting, USDB must take other steps to ensure that the student's preferences and interests are considered.

k. To the extent appropriate, with the written consent of the parents or student who is an adult, USDB must invite a representative of any participating agency that is likely to be responsible for providing or paying for postsecondary transition services.

l. Signatures on an IEP denote participation of IEP Team members in the development of the IEP.

III.F. IEP Team Attendance (34 CFR § 300.321; Rules III.F.)

1. A required member of the IEP Team is not required to attend a particular IEP Team meeting, in whole or in part, if the parents of a student with a disability or student who is an adult and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A required member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
    a. The parents or student who is an adult, in writing, and the LEA consent to the excusal; and
    b. The member submits, in writing, to the parents or student who is an adult and the IEP Team, input into the development of the IEP prior to the meeting.

III.G. Parent Participation (34 CFR § 300.322; Rules III.G.)

1. A representative from the USDB should be in attendance at the initial IEP for any student with a hearing or vision loss or both. USDB is available to assist LEAs as needed for students with a hearing or vision loss.
2. USDB must take steps to ensure that one or both of the parents of a student with a disability or the student who is an adult are present at each IEP meeting or are afforded the opportunity to participate, including:
    a. Notifying parents or student who is an adult of the meeting early enough to ensure that they will have an opportunity to attend; and
    b. Scheduling the meeting at a mutually agreed-on time and place.
3. If the parents or student who is an adult cannot attend, USDB must use other methods to ensure participation of the parents or the student who is an adult, including individual or conference telephone calls. The parents of a student with a disability or the student who is an adult and USDB may agree to use alternative means of meeting participation, such as video conferences and conference calls (34 CFR § 300.328).

4. A meeting may be conducted without a parent or the student who is an adult in attendance if USDB is unable to convince the parent(s) or the student who is an adult that they should attend. In this case, USDB must keep a record of its attempts to arrange a mutually agreed-on 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 or student who is an adult and any responses received; and
    c. Detailed records of visits made to the parents' or student who is an adult home or place of employment and the results of those visits.
5. USDB must take whatever action is necessary to ensure that the parent(s) or student who is an adult understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parent(s) or student who is an adult with deafness or whose native language is other than English.
    a. Under UCA 35A-13-604, an individual is required to be certified as an interpreter if that individual provides interpreter services for deaf and hard of hearing individuals.
    b. An individual providing interpreting services other than those for deaf and hard of hearing individuals shall be trained.
6. The parent(s) of a student with a disability or student who is an adult are participants along with school personnel in developing, reviewing, and revising the IEP for their student. This is an active role in which the parent(s) or student who is an adult:
    a. Provide critical information regarding the strengths of the student and express their concerns for enhancing the education of the student;
    b. Participate in the discussion of the student's need for special education and related services, and supplementary aids and services; and
    c. Join with other participants in deciding how the student will be involved and progress in the general curriculum, how the student will participate in State- and LEA-wide assessments, and what services USDB will provide to the student and in what setting.

7. USDB must give the parent(s) or adult student a copy of the student's IEP at no cost to the parent(s) or student who is an adult.

III.H. Notice of Meeting (34 CFR § 300.322; Rules III.H.)

1. The notice of meeting required to be provided to the parent(s) or student who is an adult must:
    a. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
    b. Inform the parent(s) or student who is an adult of the provision for participation of other individuals who have knowledge or special expertise about the student on the IEP Team.
    c. Inform the parent(s) that at their request the Part C service coordinator or other representatives of the Part C system may be invited to participate at the initial IEP Team meeting for a student previously served under Part C of the IDEA.
2. For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, the IEP notice of meeting also must:
    a. Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and postsecondary transition services for the student; and
    b. Indicate that USDB will invite the student; and
    c. Identify any other agency that will be invited, with parental or student who is an adult consent, to send a representative.
3. When conducting IEP Team meetings and placement meetings and carrying out administrative matters, the parent(s) of a student with a disability or student who is an adult and USDB may agree to use alternative means of meeting participation such as video conferences and conference calls (34 CFR § 300.328).

III.I. Development, Review, and Revision of the IEP (34 CFR § 300.324; Rules III.I.)

1. Development, review, and revision of the IEP.
    a. In developing each student's IEP, the IEP Team must consider:

(1) The strengths of the student;

(2) The concerns of the parent(s) or adult student for enhancing the education of the student;

(3) The results of the initial or most recent evaluation of the student, and

(4) The academic, developmental, and functional needs of the student.

b. The IEP Team, in conducting a meeting to develop, review and, if appropriate, revise a student's IEP, must consider the following special factors:

(1) In the case of a student with limited English proficiency (LEP), consider the language needs of the student as those needs relate to the student's IEP;

(2) In the case of a student who is blind or visually impaired, provide for instruction in braille and the use of braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in braille or the use of braille), that instruction in braille or the use of braille is not appropriate for the student;

(a) Prior to determining whether a student who is blind should use braille as the primary reading mode, the student's IEP Team must be provided (through pertinent literature or discussions with competent braille users and educators, or both) with detailed information about the use and efficiency of braille as a reading medium, in order to make an informed choice as to the student's primary reading.

(3) Consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;

(4) Consider whether the student needs assistive technology devices and services in school and on a case-by-case basis, in a student's home or other setting; and

(5) In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies (e.g., conduct an functional behavior assessment, develop a behavior intervention plan), to address that behavior.

(a) When making decisions on behavior interventions, the IEP Team must refer to the USBE Technical Assistance (TA) manual that outlines the Least Restrictive Behavior Interventions (LRBI) for information on research-based intervention procedures.

(i) Emergency safety interventions may only be included in an IEP as a planned intervention when the IEP Team agrees that less restrictive means which meet circumstances in R277-608 have been attempted, an FBA has been conducted, and a BIP based on data analysis has been developed and implemented (R277- 609).

(b) The purpose of the LRBI related to the use of positive behavior supports and behavior interventions in schools is to:

(i) Protect the safety and well-being of all students;

(ii) Provide protection for students, teachers, other school personnel, and LEAs; and

(iii) Ensure that parent(s) or students who is an adult are involved in the consideration and selection of behavior interventions to be used.

(c) When an emergency situation occurs that requires the immediate use of an emergency safety intervention to protect the student or others from harm, the staff shall comply with requirements in R277-609 with regards to time limitations and parental or student who is an adult notification.

(d) As appropriate, the student should receive an FBA and behavior intervention services and modifications that are designed to address the behavior (34 CFR § 300.530(d)(1)(ii)).

c. If, in considering the special factors described above, the IEP Team determines that a student needs a particular device or services for educational purposes (including an intervention, accommodation, or other program modification) in order for the student to receive a FAPE, the IEP Team must include a statement to that effect in the student's IEP.

d. A regular education teacher of a student with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:

(1) Appropriate positive behavior interventions and supports and other strategies for the student; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with the IEP.

2. Changes to the IEP.

a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent(s) of a student with a disability or student who is an adult and USDB may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.

(1) The LEA shall convene a meeting with the IEP Team regarding material or substantial changes to the IEP (e.g., the amount of service time, change in placement, termination of services).

b. Upon request, the parent(s) or student who is an adult must be provided with a revised copy of the IEP with the amendments incorporated.

c. If changes are made to the student's IEP through the amendment process, USDB must ensure that the student's IEP Team is informed of those changes.

3. To the extent possible, USDB must encourage the consolidation of reevaluation meetings and other IEP Team meetings for the student (34 CFR § 300.324(a)(5)).

4. Review and revision of the IEP.

    a. USDB must ensure that the IEP Team:

        (1) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

        (2) Revises the IEP, as appropriate, to address:

            (a) Any lack of expected progress toward the annual goals in the IEP and in the general education curriculum, if appropriate;

            (b) The results of any reevaluation;

            (c) Information about the student provided to, or by, the parent(s) or adult student;

            (d) The student's anticipated needs; or

            (e) Other matters.

        (3) In conducting a review of the student's IEP, the IEP Team must consider the special factors in these Rules III.I.1.b.

        (4) A regular education teacher of the student, as a member of the IEP Team, must participate in the review and revision of the IEP of the student, if the student is or may be participating in the general education classroom.

        (5) If a participating agency, other than USDB, fails to provide the postsecondary transition services described in the IEP, USDB must reconvene the IEP Team to identify alternative strategies to meet the postsecondary transition objectives for the student set out in the IEP.

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

III.J. Definition of the Individualized Education Program (IEP) (34 CFR § 300.320; Rules III.J.)

1. The term *individualized education program* (IEP) means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting. The IEP is designed to meet the student's unique needs based on their disability, and prepare them for further education, employment, and independent living.
2. The IEP must include:
    a. A statement of the student's present levels of academic achievement and functional performance (PLAAFP), including:
        (1) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same grade-level curriculum as for students who are non-disabled); or
        (2) For students in preschool, as appropriate, how the disability affects the student's participation in appropriate activities; and
        (3) For students who are blind, the results obtained from a braille-related or braille skills assessment;
    b. A statement of measurable annual goals, that describes what the student is reasonably expected to accomplish in a year and the conditions in which the goals will be performed, including academic and functional goals designed to:
        (1) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the grade-level general education curriculum; and
        (2) Meet each of the student's other educational needs that result from the student's disability;
    c. For a student with a disability, ages 14 and older, an annual IEP goal related to the student's postsecondary transition service needs.
    d. For eligible students with significant cognitive disabilities who will participate in grade-level alternate achievement standards (i.e., Essential Elements):

(1) Notification to the parent(s) or adult student that the student's academic achievement will be measured through an assessment of the grade-level Utah alternate achievement standards and how participation in such alternate achievement assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and

(2) A description of benchmarks or short-term objectives for each annual goal;

e. A description of:

(1) How the student's progress toward meeting the annual IEP goals will be measured; and

(2) When periodic reports to the parent(s) or adult student on the progress the student is making toward meeting the annual IEP goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

f. A statement of the special education and related services and supplementary aids and services (including assistive technology), based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved in and make progress in the grade-level general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other similar-aged students with disabilities and non-disabled students in the activities described in this section;

g. An explanation of the extent, if any, to which the student will not participate with similar-aged non-disabled students in the regular education environment and in the activities described in this section;

h. A statement of:

(1) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on all grade-level State- and LEA-wide assessments; and

(2) If the IEP Team determines that the student must take an alternate assessment instead of a particular regular State- or LEA-wide assessment of student achievement, a statement of why:

(a) The student cannot participate in the regular assessment; and

(b) The particular alternate assessment selected is appropriate for the student;

(c) All students, including students with disabilities, participate in statewide assessments. USDB reports the results of statewide assessments on the website. If more than one percent of students with significant cognitive disabilities participate in an alternate assessment, USDB will submit justification to the USBE on the need to exceed the cap; and

i. The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

j. A statement of school to post-school transition services.

(1) For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:

(2) Appropriate measurable postsecondary goals based upon age-appropriate postsecondary transition assessments related to training or education, employment, and, where appropriate, independent living skills; and

(3) The postsecondary transition services (including courses of study) needed to assist the student in reaching those goals.

k. Transfer of rights at age of majority.

(1) Beginning not later than one year before the student reaches the age of majority (age 18 in Utah), the IEP must include a statement that the

student has been informed of the student's rights under Part B of the IDEA that will transfer to the student on reaching the age of majority. The transfer of rights also occurs upon notification to the LEA that a student has married or become emancipated before age 18.

l. Nothing in this section shall be construed to require that additional information be included in a student's IEP beyond what is explicitly required in Section 614 of Part B of the IDEA, or require the IEP Team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

m. IEP Teams should discuss and address, if appropriate, student participation in not only the grade-level Utah Core Standards, but other general education activities and courses (e.g., health and maturation, suicide prevention), as well as the Statewide Online Education Program (SOEP) or other online, distance, blended, or competency-based courses, as well as courses taken through Career and Technical Education (CTE) programs and concurrent enrollment. Students with disabilities may require special education and related services and accommodations for equitable participation, in conjunction with Part B of the IDEA, these Rules, R277-418, R277-713, and R277-726.

III.K. IEP and Services for Preschool Students Ages Three Through Five (Rules III.K.)

1. IEP Development and Contents (34 CFR § 300.323):

   a. In developing the IEP for a student with a disability age three through five or, at the discretion of USDB, a two-year-old student with a disability who will turn age three during the school year, the IEP Team must consider the contents of an IFSP that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre- literacy, language, and numeracy skills.

   b. The IFSP may not serve as the IEP of the student.

   c. The LEA must develop an IEP for the student in accordance with the procedures in these Rules.

2. Services for students with disabilities ages three through five, served in preschool programs of USDB, are to be provided consistent with the Rules

including consideration of the continuum of alternative placement options (34 CFR § 300.124).

3. Preschool transition planning for students referred from Part C providers must be conducted consistent with the State's current interagency preschool transition agreement with Part C. This planning shall be implemented at least 90 calendar days, as required by Part C regulations 637(a)(9), before the student is eligible for the preschool program under Part B of the IDEA in accordance with the Rules. USDB will participate in the preschool transition planning meeting arranged by the lead agency for the Part C program (34 CFR § 300.124).
4. Services for students age three.
    a. By the eligible student's third birthday, USDB must ensure that an IEP has been developed and is being implemented for the student (34 CFR § 300.124(b)).
    b. If a student's third birthday occurs after the end of the school year, USDB must ensure that an IEP has been developed, and the student's IEP Team shall determine the date in the next school year when services under the IEP will begin, except that the IEP Team may determine that extended school year services are needed outside the school year.

III.L. Physical Education (34 CFR § 300.108; Rules III.L.)

1. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving a FAPE, unless USDB enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.
2. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to students who are nondisabled unless:
    a. The student is enrolled full time in a separate facility; or
    b. The student needs specially designed physical education, as prescribed in the student's IEP.

3. If specially designed physical education (e.g., adapted physical education) is prescribed in a student's IEP, the LEA responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs.
4. USDB is responsible for the education of a student with a disability who is enrolled in a separate facility and must ensure that the student receives appropriate physical education services.

III.M. Assistive Technology (34 CFR § 300.105 AND R277-495; Rules III.M.)

1. USDB 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 the student's:
    a. Special education,
    b. Related services, or
    c. Supplementary aids and services.
2. 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.

III.N. Extended School Year (ESY) Services (34 CFR § 300.106; R277-751; Rules III.N.)

1. *Extended school year services* mean special education and related services that:
    a. Are provided to an eligible student with a disability:
        (1) Beyond the normal school year of USDB;
        (2) In accordance with the student's IEP; and
        (3) At no cost to the parent(s) of the student or student who is an adult; and
    b. Meet the standards of the USBE in R277-751.
2. USDB shall ensure that:

a. Extended school year services are available as necessary to provide FAPE, consistent with the Rules and considered for each individual student with a disability during an IEP, based upon a review of multiple data sources and factors.

b. ESY student programs are provided in the least restrictive environment.

c. ESY teachers and paraeducators meet USBE's and IDEA requirements.

3. Extended school year 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. The annual IEP shall reflect the IEP Team's decision regarding the need for ESY services.

a. Parent(s) or the student who is an adult shall be provided with prior written notice of proposal or refusal to provide ESY services.

b. If determined as eligible for ESY services, the IEP Team shall determine the appropriate ESY program, based on the student's individual needs.

c. ESY eligibility decisions and prior written notice of ESY programs shall be provided to parent(s) or student who is an adult in sufficient time to permit accessing dispute resolution options of the procedural safeguards, in the event of a dispute.

4. In implementing the requirements of this section, USDB may not:

a. Limit extended school year services to particular categories of disability, age, or grade level;

b. Unilaterally limit the type, amount, or duration of those services; or

c. Limit data consideration by IEP Teams to only an analysis of regression and recoupment.

III.O. Least Restrictive Environment (LRE) (34 CFR § 300.114; Rules III.O.)

1. USDB must ensure that:

a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities (e.g., nursing homes), are educated with similar-aged students who are nondisabled; and

b. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs 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.

c. In the case of a student who is deaf or hard of hearing, consideration of a special class or school may be the least restrictive environment in that it provides opportunities for direct communication and instruction in the student's language and communication mode with professional personnel and peers.

d. LRE provisions apply to transition programs (i.e., preschool and postsecondary) and placement.

2. A state funding mechanism must not result in placements that violate the LRE requirements of the Rules III.P.–S.

III.P. Inclusionary Practices to Provide a Full Educational Opportunity (34 CFR § 300.109; Rules III.P.)

1. USDB works with LEAs across the State to develop inclusionary practices that include the components in the definition using evidence-based practices. LEA's may benefit from USBE Technical Assistance, and other resources. The USDB Technical Assistance Manual outlines these collaborative efforts.

III.Q. Continuum of Alternative Placements (34 CFR § 300.115; Rules III.Q.)

1. USDB provides services to students with a hearing or vision loss in a continuum of placements to the meet the needs of students with sensory losses either in their LEA or USDB; including regular classes, special classes, a special school, home instruction and instruction in hospitals and institutions.
2. The continuum required must:
   a. Include the following alternative placements for instruction:
      (1) Regular classes with their LEA,
      (2) Special classes located in an LEA,

(3) Special schools located at one of the 4 campuses (Ogden, Salt Lake, Springville, or St. George),

(4) Home instruction, and

(5) Instruction in hospitals and institutions; and

3. Makes provision for supplementary services to be provided in conjunction with the regular class placement in an LEA.

III.R. PLACEMENTS (34 CFR § 300.116; RULES III.R.)

1. In determining the educational placement of a student with a disability, including a preschool or postsecondary transition-aged student with a disability, USDB must ensure that:

   a. The placement decision:

      (1) Is made by a group of persons, including the parent(s) or student who is an adult and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

      (2) Is made in conformity with the LRE provisions above.

   b. The student's placement:

      (1) Is determined at least annually;

      (2) Is based on the student 's IEP; and

      (3) 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 is educated in the school that the student would attend if nondisabled after special factors have been considered;

   d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs; and

   e. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

III.S. Parental Involvement in Placement Decisions (34 CFR §§ 300.327, 300.501; Rules III.S.)

1. USDB shall ensure that the parent(s) of each student with a disability or adult student are members of any group that makes decisions on the educational placement of the parent's student or the student who is an adult (Rules IV.B).
2. In implementing this requirement, USDB shall use procedures for parent or student who is an adult involvement in placement decisions consistent with those used for parent participation in IEP meetings.
3. If neither parent or the student who is an adult can participate in a meeting in which a decision is to be made relating to the educational placement of the student, USDB shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.
4. A group may make a placement decision without the involvement of the parent(s) or student who is an adult if USDB is unable to obtain either parent's or student who is an adult participation in the decision. In this case, the LEA must have a record of its attempts to ensure their involvement.

III.T. Nonacademic Settings and Extracurricular Activities (34 CFR § 300.117; UCA 53G-6-709; Rules III.T.)

1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities in Rules III.V, USDB must ensure that each student with a disability participates with students who are nondisabled in the extracurricular services and activities to the maximum extent appropriate to the needs of that student.
2. USDB must ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.
3. A student with a disability (under the age of 22 who has not graduated from high school with a regular high school diploma, whose IEP Team recommends participation) may not be denied the opportunity of participating in public school programs or extracurricular activities solely because of the student's age, unless the participation threatens the health or safety of the student.

USDB, in cooperation with the Utah Department of Health, shall establish criteria used to determine the health and safety factor (UCA 53G-6-709).

III.U. Nonacademic Services (34 CFR § 300.107; Rules III.U.)

1. USDB must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
2. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by USDB, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by USDB and assistance in making outside employment available.

IV. Procedural Safeguards Due Process Procedures for Parent(s) and Students (IDEA Subpart E)

1. Consistent with the requirements of Part B of the IDEA and these Rules USDB shall establish, maintain, and implement procedural safeguards for students with disabilities and their parent(s) or students who is an adult. (34 CFR § 300.500).

IV.A. Parental Opportunity to Examine Records and Participate in Meetings (34 CFR § 300.501; Rules IV.A.)

1. Opportunity to examine records.
    a. The parent(s) of a student with a disability or student who is an adult must be afforded, in accordance with these Rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student.
2. Parent participation in meetings.
    a. The parent(s) of a student with a disability or student who is an adult must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student.
    b. USDB must provide notice, consistent with the Rules, to ensure that parents of students with disabilities or adult students have the opportunity to participate in meetings.
    c. A meeting does not include informal or unscheduled conversations involving USDB personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that USDB personnel engage in to develop a proposal or a response to a parent or student who is an adult that will be discussed at a later meeting.
3. Parent involvement in placement decisions.

a. USDB must ensure that a parent of each student with a disability or student who is an adult is a member of any group that makes decisions on the educational placement of the parent's student (34 CFR § 300.327), including notifying the parent(s) or student who is an adult of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed-on time and place (34 CFR § 300.322(a)).

b. The notice of meeting must indicate the purpose(s), time, and location of the meeting, who will be in attendance, and inform the parents or student who is an adult of their right to bring other individuals who have knowledge or special expertise about the student (34 CFR § 300.322(b)).

c. If neither parent or the student who is an adult can participate in a meeting in which a decision is to be made relating to the educational placement of the student, USDB must use other methods to ensure their participation, including individual or conference telephone calls or video conferencing.

d. A placement decision may be made by a group without the involvement of a parent or student who is an adult if USDB is unable to obtain the parents' or student who is an adult participation in the decision. In this case, USDB must have a record of its attempt to ensure their involvement.

IV.B. **Independent Educational Evaluation (34 CFR § 300.502; Rules IV.B.)**

1. Definitions.

   a. *Independent educational evaluation* (IEE) means an evaluation conducted by a qualified examiner who is not employed by USDB responsible for the education of the student in question.

   b. *Public expense* means that USDB either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent or student who is an adult.

2. USDB has established and implemented policies and procedures related to independent educational evaluation that meet the requirements of Part B of the IDEA and the Rules.

3. The following requirements must be addressed:

a. The parents of a student with a disability or student who is an adult have the right to obtain an IEE of the student at public expense if they disagree with an evaluation obtained by USDB.

b. USDB must provide to the parents or student who is an adult, upon request for an IEE, information about where an IEE may be obtained and the USDB criteria applicable for IEEs.

c. If a parent or student who is an adult requests an IEE at public expense, USDB must, without unnecessary delay, either:

   (1) File a request for a due process complaint and hearing to show that its evaluation is appropriate; or

   (2) Ensure that an IEE is provided at public expense, unless USDB demonstrates in a due process hearing that the evaluation obtained by the parent or student who is an adult did not meet USDB criteria.

d. If USDB files a due process complaint and request for hearing, and the final decision is that USDB's evaluation is appropriate, the parent or student who is an adult still has the right to an IEE, but not at public expense.

e. If a parent or student who is an adult requests an IEE, USDB may ask for the parents' or student who is an adult's reason why they object to the public evaluation. However, the explanation by the parent or student who is an adult may not be required and USDB may not unreasonably delay either providing the IEE at public expense or requesting a due process hearing to defend the public evaluation.

f. A parent or student who is an adult is entitled to only one IEE at public expense each time USDB conducts an evaluation with which the parent or adult student who is an adult disagrees.

g. If the parent or adult student who is an adult either obtains an IEE at public expense or shares an evaluation obtained at private expense with USDB, the results of the evaluation:

   (1) Must be considered by USDB, in any decision made with respect to the provision of a FAPE to the student provided that the IEE meets USDB criteria; and

(2) May be presented by any party as evidence at a hearing on a due process complaint regarding that student.

h. If a hearing officer requests an IEE as part of a due process hearing, the cost of the evaluation must be at public expense.

i. If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that USDB uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or student who is an adult right to an IEE.

j. Except for the criteria described above, USDB may not impose additional conditions or timelines related to obtaining an IEE at public expense.

4. An IEE conducted at USDB's expense becomes the property of USDB, in its entirety.

IV.C. **Prior Written Notice (34 CFR § 300.503; Rules IV.C.)**

1. Prior written notice must be given to the parents of a student with a disability or student who is an adult a reasonable time before USDB:

   a. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or

   b. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student.

2. The notice required must include:

   a. A description of the action proposed or refused by USDB;

   b. An explanation of why USDB proposes or refuses to take the action;

   c. A description of each evaluation procedure, assessment, record, or report USDB used as a basis for the proposed or refused action;

   d. A statement that the parent(s) of a student with a disability or student who is an adult have protection under the procedural safeguards of Part B 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;

e. Sources for the parent(s) or student who is an adult to contact to obtain assistance in understanding the provisions of Part B of the IDEA;

f. A description of other options that the IEP Team considered and the reasons why those options were rejected; and

g. A description of other factors that are relevant to USDB's proposal or refusal.

3. The notice must be:

a. Written in language understandable to the general public; and

b. Provided in the native language of the parent or student who is an adult or other mode of communication used by the parent or student who is an adult, unless it is clearly not feasible to do so.

(1) If the native language or other mode of communication of the parent or student who is an adult is not a written language, USDB must take steps to ensure that:

(a) The notice is translated orally or by other means to the parent or student who is an adult in the parent's or student who is an adult native language or other mode of communication;

(b) The parent or student who is an adult understands the content of the notice; and

(c) There is written evidence that the requirements above have been met.

IV.D. **Procedural Safeguards Notice (34 CFR § 300.504; Rules IV.D.)**

1. A copy of the procedural safeguards available to the parent(s) of a student with a disability or student who is an adult must be given to the parent(s) or student who is an adult only one time a year, except that a copy also must be given to the parent(s) or student who is an adult:

a. Upon initial referral or parent or student who is an adult request for evaluation;

b. Upon receipt of the first State complaint or a due process complaint in that school year;

c. In accordance with the discipline procedures in 34 CFR § 300.530(h) and Rules V.F.; and

d. Upon request by a parent or student who is an adult.

2. USDB may place a current copy of the procedural safeguards notice on its website if a website exists.

3. The procedural safeguards notice must include a full explanation of all the procedural safeguards relating to:

a. Independent educational evaluations;

b. Prior written notice;

c. Parental or student who is an adult consent;

d. Access to educational records;

e. The opportunity to present and resolve complaints through the, including:

(1) The time period in which to file a due process complaint or State complaint;

(2) The opportunity for the agency to resolve the due process hearing complaint or State complaint; and

(3) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

f. The availability of mediation;

g. The student's placement during pendency of hearings on due process complaints;

h. Procedures for students who are subject to placement in an interim alternative educational setting (IAES);

i. Requirements for unilateral placement by parent(s) of students or by a students who is an adult in private schools at public expense;

j. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

k. State-level appeals;

l. Civil actions, including the time period in which to file those actions; and

m. Attorneys' fees.

4. The notice required must be in language understandable to the parent(s) or student who is an adult as set forth in 34 CFR § 300.503(c) and Rules IV.C.3.

5. A parent of a student with a disability or student who is an adult may elect to receive prior written notice, procedural safeguards notice, and prior written notice following a due process complaint pursuant to Rules IV.H.6 by an electronic mail communication, if USDB makes that option available (34 CFR § 300.505).

IV.E. State Complaint Procedures (34 CFR § 300.151–153; Rules IV.E.)

USDB follows all requirements found in Rules IV.E regarding State complaint procedures.

IV.F. Mediation (34 CFR § 300.506; Rules IV.F.)

USDB follows all requirements found in Rules IV.E regarding Mediation.

IV.G. Filing a Due Process Complaint (34 CFR § 300.507; UCA 53E-7- 208; Rules IV.G.)

USDB follows all requirements found in Rules IV.G regarding filing a due process complaint.

IV.H. Due Process Complaint (34 CFR § 300.508; Rules IV.H.)

USDB follows all requirements found in Rules IV.H regarding due process complaints.

IV.I. Resolution Process (34 CFR § 300.510; Rules IV.J.)

USDB follows all requirements found in Rules IV.J regarding the resolution process.

IV.J. Impartial Due Process Hearing (34 CFR § 300.511; Rules IV.K.)

USDB follows all requirements found in Rules IV.K regarding impartial due process hearings.

IV.K. **Hearing Rights (34 CFR § 300.512; Rules IV.L.)**

USDB follows all requirements found in Rules IV.L regarding hearing rights.

IV.L. **Hearing Decisions (34 CFR § 300.513; Rules IV.M.)**

USDB follows all requirements found in Rules IV.M regarding hearing decisions.

IV.M. **Finality of Decision (34 CFR § 300.514; Rules IV.N.)**

USDB follows all requirements found in Rules IV.N regarding finality of decisions.

IV.N. **State Enforcement Mechanisms (34 CFR § 300.537; Rules IV.O.)**

USDB follows all requirements found in Rules IV.O regarding State enforcement mechanisms.

IV.O. **Timelines and Convenience of Hearings (34 CFR § 300.515; Rules IV.P.)**

USDB follows all requirements found in Rules IV.P regarding timelines and convenience of hearings.

IV.P. **Civil Action (34 CFR § 300.516; Rules IV.Q.)**

USDB follows all requirements found in Rules IV.Q regarding civil action.

IV.Q. **Attorney's Fees (CFR §300.517; UCA 53E-7-208(4)(B); Rules IV.R.)**

USDB follows all requirements found in Rules IV.R regarding attorneys' fees.

IV.R. **Student's Status During Proceedings (34 CFR § 300.518; Rules IV.S.)**

USDB follows all requirements found in Rules IV.S regarding student's status during proceedings.

IV.S. **Surrogate Parents (34 CFR § 300.519; Rules IV.T.)**

1. USDB must ensure that the rights of a student are protected when:
    a. No parent (as defined under 34 CFR § 300.30 and Rules I.E.34.) can be identified for a student under the age of majority;
    b. USDB after reasonable efforts, cannot locate a parent for a student under the age of majority;

c. The student is a ward of the State under the laws of Utah; or

d. The student is an unaccompanied youth experiencing homelessness under the age of majority.

2. The duties of USDB include the assignment of an individual to act as a surrogate for the parent(s) for a student under the age of majority. This must include a method for determining whether a student under the age of majority needs a surrogate parent and for assigning a surrogate parent to the student.

3. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements.

4. USDB may select a surrogate parent in any way permitted under State law.

5. USDB must ensure that a person selected as a surrogate parent:

   a. Is not an employee of the USBE, USDB, or any other agency that is involved in the education or care of the student;

   b. Has no personal or professional interest that conflicts with the interest of the student that the surrogate parent represents; and

   c. Has knowledge and skills that ensure adequate representation of the student.

6. A person otherwise qualified to be a surrogate parent is not an employee of USDB solely because the person is paid by USDB to serve as a surrogate parent.

7. In the case of a student who is an unaccompanied youth experiencing homelessness, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates until a surrogate can be appointed that meets all of the requirements.

8. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student.

9. The USBE and USDB must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after USDB determines that the student needs a surrogate.

IV.T. Transfer of Parental Rights at Age of Majority (34 CFR § 300.520; Rules IV.U.)

1. When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students, except for a student with a disability who has been determined to be incompetent under State law, or the student with a disability marries or becomes emancipated:
    a. USDB must provide any notice required by Part B of the IDEA to both the individual and the parent(s); and
    b. All other rights accorded to parents under Part B of the IDEA transfer to the student.;
2. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution; and
3. Whenever a state transfers rights, USDB must notify the individual and the parent(s) of the transfer of rights within a reasonable time frame.

IV.U. Confidentiality of Information (34 CFR §§ 300.610–300.626; R277-487; Rules IV.V.)

1. USDB takes appropriate steps to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by USDB pursuant to Part B of the IDEA and R277-487. USDB follows all requirements found in Rules IV.V.1-19 regarding confidentiality of information including.
2. Definitions as used in Rules (34 CFR § 300.611). (Rules IV.V.2)
    a. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
    b. *Education records* means the type of records covered under the definition of "education records" in 34 CFR § 99, implementing regulations for the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g (FERPA).

c. *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

3. Record of access (34 CFR § 300.614). (Rules IV.V.6)

    a. USDB must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA and the Rules (except access by parents or student who is an adult and authorized employees of USDB), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

4. Records on more than one student (34 CFR § 300.615). (Rules IV.V.7)

    a. If any education record includes information on more than one student, the parent(s) of those students or the student who is an adult have the right to inspect and review only the information relating to their student or themselves or to be informed of that specific information.

5. List of types and locations of information (34 CFR § 300.616). (Rules IV.V.8)

    a. On request, USDB must provide parents or student who is an adult with a list of the types and locations of education records collected, maintained, or used by USDB.

6. Fees (34 CFR § 300.617). (Rules IV.V.9)

    a. USDB may charge a fee for copies of records that are made for parent(s) or student who is an adult under Part B of the IDEA if the fee does not effectively prevent the parent(s) or student who is an adult from exercising their right to inspect and review those records.

    b. USDB may not charge a fee to search for or to retrieve information under Part B of the IDEA.

7. Consent for disclosure of PII (34 CFR § 300.622). (Rules IV.V.14)

    a. Except as to disclosures addressed in referral to and action by law enforcement and judicial authorities, for which parental consent is not required by 34 CFR § 99, parental or adult student consent must be obtained before PII is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under Part B of the IDEA or the Rules: or

(2) Used for any purpose other than meeting a requirement of Part B of the IDEA or the Rules.

b. USDB may not release information from education records to participating agencies without parental or adult student consent unless authorized to do so by 34 CFR §§ 99.31 and 99.34 (FERPA):

(1) 34 CFR § 99.31 allows an LEA to disclose PII from the education records of a student without the written consent of the parent(s) of the student or student who is an adult, if the disclosure is:

(a) To other school officials, including teachers, within the LEA who have been determined by the LEA to have legitimate educational interests.

(b) To officials of another school or school site in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR § 99.34 below.

(2) 34 CFR § 99.34 requires that an LEA transferring the education records of a student pursuant to 34 CFR § 99.34 above shall make a reasonable attempt to notify the parent of the student or student who is an adult of the transfer of records at the last known address of the parent or student who is an adult, except that the LEA does not have to provide any further notice of the transfer of records when:

(a) The transfer is initiated by the parent(s) or student who is an adult at the sending LEA.

(b) The LEA includes in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which a student seeks or intends to enroll.

(c) The LEA transferring the records must keep a copy of the records for three years after the transfer.

c. USDB, upon receiving PII from another educational agency or institution may make further disclosure of the information on behalf of the LEA

without the prior written consent of the parent(s) or student who is an adult if the conditions of 34 CFR §§ 99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements.

d. If the parent(s) or student who is an adult refuses consent for the release of PII to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

e. Note: As authorized in 34 CFR § 99.31 (FERPA), USDB includes in the annual procedural safeguards notice that it is their policy to forward educational records of a student with disabilities without parental or student who is an adult consent or notice to officials of another school or school district in which a student seeks or intends to enroll.

8. Safeguards (34 CFR § 300.623). (Rules IV.V.15)

   a. USDB must protect the confidentiality of PII at collection, storage, disclosure, and destruction stages.

   b. One official at USDB must assume responsibility for ensuring the confidentiality of any PII.

   c. All persons collecting or using PII must receive training or instruction regarding the State's policies and procedures in this section and 34 CFR § 99.

   d. USDB must maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to PII on students with disabilities.

9. Destruction of information (34 CFR § 300.624). (Rules IV.V.16)

   a. USDB must inform parents or student who is an adult when PII collected, maintained, or used under Part B of the IDEA and these Rules is no longer needed to provide educational services to the student.

   b. The information no longer needed must be destroyed at the request of the parent(s) or student who is an adult. However, a permanent record of a student's name, address, phone number, the student's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

c. Each student's records may be considered "no longer needed to provide educational services" and may be destroyed three years after the student graduates or three years after the student turns 22 under IDEA. Medicaid requires that records be maintained for at least five years after the provision of services.

10. Students' rights (34 CFR § 300.625). (Rules IV.V.17)

a. The rights of privacy afforded to parent(s) are transferred to the student who reaches the age of 18, providing the student has not been declared incompetent by a court order or the student has married or become emancipated.

V. Discipline Procedures

V.A. Discipline Procedures for Students with Disabilities (34 CFR § 300.530; Rules V.A.)

1. Consistent with the requirements of Part B of the IDEA and the Rules, USDB shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

V.B. Authority of School Personnel (34 CFR § 300.530(A–C); Rules V.B.)

1. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.
2. School personnel may remove a student with a disability who violates a code of student conduct from the student's current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than ten consecutive school days (to the same extent those alternatives are applied to students without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, (as long as those removals do not constitute a change of placement because of disciplinary removal as set forth in 34 CFR § 300.536 and Rules V.D.).
3. After a student with a disability has been removed from the student's current placement for ten school days in the same school year, during any subsequent days of removal USDB must provide services to the extent required under 34 CFR § 300.530(d) and Rules V.C.
4. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except after the tenth day of removal that constitutes a change in placement, USDB must provide services to the student as outlined in Rules V.C.

V.C. SERVICES (34 CFR § 300.530(D); RULES V.C.)

1. A student with a disability who is removed from the student's current placement must:
    a. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
    b. Receive, as appropriate, an FBA, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
2. The services may be provided in an IAES.
3. USDB is only required to provide services during periods of removal to a student with a disability who has been removed from the student's current placement for ten school days or less in that school year if it also provides services to a student without disabilities who is similarly removed.
4. After a student with a disability has been removed from the student's current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under 34 CFR § 300.536 and Rules V.D., school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
5. If the removal is a change of placement, the student's IEP Team determines appropriate services to be provided during the removal.

V.D. CHANGE OF PLACEMENT DUE TO DISCIPLINARY REMOVALS (34 CFR § 300.536; RULES V.D.)

1. For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if:
    a. The removal is for more than ten consecutive school days, including shortened school days; or

b. The student has been subjected to a series of removals that constitute a pattern, including shortened school days:

(1) Because the series of removals total more than ten school days in a school year;

(2) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(3) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

2. As used in the Rules, shortened school days occur when a student's school day is reduced solely by school personnel in response to the student's behavior for disciplinary purposes, rather than the student's IEP team or placement team for that student to receive a FAPE.

a. In general, the use of informal removals to address a student's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement. Therefore, the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536 and Rules V. would generally apply unless all three of the following factors are met:

(1) The student is afforded the opportunity to continue to appropriately participate in the general curriculum;

(2) The student continues to receive the services specified on the student's IEP; and

(3) The student continues to participate with nondisabled children to the extent they would have in their current placement. 71 Fed. Reg. 46715 (Aug. 14, 2006).

3. USDB determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

V.E. MANIFESTATION OF DETERMINATION (34 CFR § 300.530(E–G, I); RULES V.E.)

1. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent or adult student, and relevant members of the student's IEP Team (as determined by the parent or student who is an adult and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent(s) or adult student to determine:
    a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
    b. If the conduct in question was the direct result of USDB's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the student's disability if the LEA, the parent or student who is an adult, and relevant members of the student's IEP Team determine that:
    a. The misconduct was caused by or had a direct and substantial relationship to the student's disability; or
    b. The misconduct was the direct result of USDB 's failure to implement the IEP.
3. If the LEA, the parent or student who is an adult, and relevant members of the student's IEP Team determine that the misconduct was the direct result of the USDB 's failure to implement the IEP, USDB must take immediate steps to remedy those deficiencies.
4. If the LEA, the parent(s) or student who is an adult, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team must:
    a. Either:
        (1) Conduct a functional behavior assessment (FBA), unless USDB had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or

(2) If a BIP has already been developed, review the BIP, and modify it, as necessary, to address the behavior;

b. And, unless the misconduct falls under the definition of special circumstances in Rules V.E.5., return the student to the placement from which the student was removed, unless the parent or adult student and the LEA agree to a change of placement as part of the modification of the BIP.

5. Special circumstances.

a. School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the USDB;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction USDB; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of USDB.

b. Definitions.

(1) For purposes of this section, the following definitions apply:

(a) *Controlled substance* means a drug or other substance that cannot be distributed without a prescription, identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)).

(b) *Illegal drug means* a controlled substance but does not include a drug controlled, possessed, or used under the supervision of a licensed health- care professional or one legally possessed or used under the Controlled Substances Act or under any other provision of Federal law (21 USC § 812).

(c) *Serious bodily injury* means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC § 1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (18 USC § 1365).

(d) *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 2.5 inches (18 USC § 930).

V.F. Procedural Safeguards Notice (34 CFR § 300.530(H); Rules V.F.)

1. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, USDB must notify the parent(s) or student who is an adult of that decision and provide the parent(s) or student who is an adult the procedural safeguards notice.

V.G. Determination of Setting (34 CFR § 300.531; Rules V.G.)

1. The student's IEP Team determines the IAES for services if the behavior that gives rise to the removal is not a manifestation of the student's disability, the removal constitutes a change of placement, or the behavior falls under the special circumstances in Rules V.E.5.

V.H. Appeals by Parent or LEA (34 CFR § 300.532; Rules V.H.)

1. The parent(s) of a student with a disability or student who is an adult who disagrees with any decision regarding placement or the manifestation determination, or if USDB believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by filing a due process hearing complaint and requesting a hearing.
2. Authority of hearing officer.

a. A due process hearing officer hears and makes a determination regarding an appeal under Rules V.H.1.

b. In making the determination, the hearing officer may:

(1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the discipline procedures under Part B of the IDEA or the Rules or that the student's behavior was a manifestation of the student's disability; or

(2) Order a change of placement of the student with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

c. The appeal procedures may be repeated if USDB believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

3. Expedited due process hearing.

a. Whenever a hearing is requested, the parent(s) or student who is an adult or USDB in the dispute must have an opportunity for an impartial due process hearing.

b. USDB is responsible for arranging the expedited due process hearing with the State Director of Special Education, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing.

c. Unless the parent(s) or student who is an adult and USDB agree in writing to waive the resolution meeting, or agree to use mediation:

(1) A resolution meeting must occur within seven calendar days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process complaint.

d. Parties may not mutually agree to extend the resolution period to resolve an expedited due process complaint. Therefore, when the parties have participated in a resolution meeting or engaged in mediation and the dispute has not been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the expedited due process hearing may proceed.

e. A hearing officer may not extend the timeline for making a determination in an expedited due process hearing.

f. The decisions on expedited due process hearings are final, unless meeting the requirements of 34 CFR § 300.514(b) or 34 CFR § 300.516.

V.I. Placement During Appeals (34 CFR § 300.533; Rules V.I)

1. When an appeal through a due process complaint has been made by either the parent or student who is an adult or USDB, the student must remain in the IAES pending the decision of the hearing officer or until the expiration of the time period specified, whichever occurs first, unless the parent(s) or adult student and USDB (or USBE if appropriate) agree otherwise.

V.J. Protections for Students Not Determined Eligible for Special Education and Related Services (34 CFR § 300.534; Rules V.J.)

1. A student who has not been determined to be eligible for special education and related services under Part B of the IDEA, and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if USDB had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
2. USDB must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:

    a. The parent(s) of the student or student who is an adult expressed concern in writing to supervisory or administrative personnel of USDB, or a teacher of the student, that the student is in need of special education and related services;

b. The parent(s) of the student or student who is an adult requested an evaluation of the student pursuant to 34 CFR §§ 300.300 through 300.311; or

c. The teacher of the student, or other personnel of USDB, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of USDB or to other supervisory personnel of USDB.

3. USDB would not be deemed to have knowledge that a student is a student with a disability if:

   a. The parent(s) of the student or the student who is an adult:

      (1) Has not allowed an evaluation of the student pursuant to 34 CFR §§ 300.300 through 300.311; or

      (2) Has refused services under this part; or

   b. The student has been evaluated in accordance with 34 CFR §§ 300.300 through 300.311 and determined to not be a student with a disability under Part B of the IDEA.

4. If USDB does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors.

   a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

      (1) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

      (2) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by USDB and information provided by the parent(s) or adult student, USDB must provide special education and related services.

V.K. Referral To and Action By Law Enforcement and Judicial Authorities (34 CFR § 300.535; Rules V.K.)

1. Nothing in Part B of the IDEA prohibits USDB from reporting a crime committed by a student with a disability to appropriate authorities or prevents 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.
2. Transmittal of records.
    a. If USDB reports a crime committed by a student with a disability, it must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom USDB reports the crime.
    b. If USDB reports a crime under this section, it may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by FERPA.

VI. Students with Disabilities in Other Settings

VI.A. Private School Placements by LEAs (34 CFR § 300.325; Rules VI.A.)

1. USDB does not place student in private schools. If a student with a disability does not qualify for placement at USDB, the child's LEA is responsible for compliance with the requirement of the IDEA.

VI.B. Students with Disabilities Enrolled by Their Parent(s) in Private Schools When FAPE is Not at Issue (Unilateral Placement) (34 CFR § 300.130; Rules VI.B.)

1. USDB follows all requirements found in Rules VI.B regarding students with disabilities enrolled by their parent(s) in private schools when FAPE is not at issue (unilateral placement).

VI.C. Students with Disabilities Enrolled by Their Parent(s) in Private Schools When FAPE is at Issue (34 CFR § 300.148; Rules VI.C.)

1. USDB follows all requirements found in Rules VI.C regarding students with disabilities enrolled by their parent(s) in private schools when FAPE is at issue.

VI.D. Students with Disabilities Enrolled in Home School (Rules IV.D.)

1. USDB is responsible for location, identification, and evaluation for eligibility for home schooled students in its boundaries.
2. A student who is home schooled shall meet the eligibility criteria for students with disabilities in conformity with Rules II.C.–H., including proper documentation, using comparable procedures to those required for identifying a student eligible in a public school.
3. If a parent of a student or student who is an adult who is home schooled or placed in a private school by the parent(s) at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent or student who is an adult fails to respond to a request to provide consent (34 CFR § 300.300):
    a. The USDB may not use the dispute resolution procedures provided in the procedural safeguards, including mediation or due process procedures; and

   b. The USDB is not required to consider the student as eligible for services.

4. Students enrolled in home school full time.

   a. No student with a disability who is home schooled full time has an individual right to receive any of the special education and related services the student would receive if enrolled in a public school.

5. USDB must make the final decision with respect to the services, if any, to be provided to eligible home-schooled students with disabilities.

6. USDB may develop a services plan for students who are home schooled with disabilities who are eligible for special education and related services under Part B of the IDEA and the Rules. The services plan shall describe the special education and related services, if any, USDB will provide to the student, and must, to the extent appropriate:

   a. Meet the IEP content requirements with respect to the services provided; and

   b. Be developed, reviewed, and revised consistent with the IEP provisions in Rules III.I.

7. USDB shall determine where and when any services specified in the services plan will be provided.

8. Dual enrollment (R277-438 and UCA 53G-6-702).

   a. A student with a disability who is simultaneously enrolled in both home school or private school and a public school is considered a student in dual enrollment.

   b. A student with a disability seeking dual enrollment is entitled to special education and related services, under an IEP, for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP Team. The IEP Team must consider the amount of time and courses needed for the provision of FAPE.

9. Home schools do not meet the definition of private schools (R277-438).

VI.E. Students with Disabilities Enrolled in Adult Education (R277- 733; UCA 53E-10-205; Rules VI.E.)

1. Students with disabilities enrolled in Adult Education remain entitled to special education and related services until determined no longer meeting eligibility criteria, graduate with a regular high school diploma, or reach maximum age (i.e., age 22).
2. The responsibility for FAPE for students with disabilities enrolled in Adult Education classes remains with the school district of residence.

VI.F. Students with Disabilities Enrolled IN Virtual Settings (Rules VI.F.)

1. Students with disabilities enrolled in public education virtual settings remain entitled to special education and related services until determined no longer meeting eligibility criteria, graduate with a regular high school diploma, or reach maximum age.
2. The responsibility for FAPE for students with disabilities enrolled in public education virtual settings remains with the LEA of enrollment, unless Board Rule specifies otherwise.

VI.G. Students with Disabilities Convicted as Adults and Incarcerated in Adult Prisons (34 CFR § 300.324; Rules VI.J.)

1. USDB follows all requirements found in Rules VI.J regarding students with disabilities convicted as adults and incarcerated in adult prisons.

VI.H. Students with Disabilities Who are Also in State Custody/Care (R277-709; UCA 62A-4A-701; Rules VI.K.)

1. USDB follows all requirements found in Rules VI.K regarding students with disabilities who are also in state custody/care.

VI.I. Students with Disabilities Who Reside in Nursing Homes (Rules VI.L.)

1. USDB follows all requirements found in Rules VI.L regarding students with disabilities who reside in nursing homes. Students with disabilities residing in nursing homes and their parent(s) or students who is an adult have the same rights under IDEA as all other students who are IDEA-eligible students with disabilities.

VII. Preschool and Postsecondary Transitions

VII.A. Preschool Transition from Part C to Part B of the IDEA (Rules VII.A.)

1. At the beginning of each school year, USDB must have an IEP in effect for each student with a disability ages three through five within its jurisdiction (34 CFR § 300.323).
2. The USBE and USDB must have in effect policies and procedures to ensure that (34 CFR § 300.124):
    a. Students 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, experience a smooth and effective transition to those preschool programs;
    b. By the eligible student's third birthday, an IEP has been developed and is being implemented for the student;
    c. If a student's third birthday occurs after the end of the school year, the student's IEP Team shall determine the date in the next school year when services under the IEP will begin, except that the IEP Team may determine that extended school year services are needed outside the school year; and
    d. USDB will participate in preschool transition planning conferences arranged by the designated lead agency for Part C.
3. In developing the IEP for a student with a disability ages three through five or, at the discretion of USDB, a student who is two-years-old with a disability who will turn age three during the school year, the IEP Team must consider the contents of an IFSP that contains the natural environments statement and an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills (34 CFR § 300.323).
4. In the case of a student who was previously served under Part C of the IDEA, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services (34 CFR § 300.321).

VII.B. **Postsecondary Transition Services—School to Post-School (Rules VII.B.)**

1. Purpose (34 CFR § 300.1; Rules VII.B.1.).
    a. To ensure that all students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.
2. Definition (34 CFR § 300.43; Rules VII.B.2.)
    a. *Postsecondary Transition services* means a coordinated set of activities for a student with a disability that:
        (1) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability, to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, competitive integrated employment (including supported employment), continuing and adult education, adult services, independent living, or full community participation;
        (2) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and includes:
            (a) Instruction;
            (b) Related services;
            (c) Community experiences;
            (d) The development of employment and other post-school adult living objectives; and
            (e) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
    b. Postsecondary Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

3. Parent or student who is an adult participation (34 CFR § 300.322; Rules VII.B.3).

    a. For a student with a disability age 14 and older, or younger if determined appropriate by the IEP Team, the notice of meeting must indicate:

        (1) That a purpose of the meeting will be the consideration of the postsecondary goals and postsecondary transition services for the student;

        (2) That the LEA will invite the student; and

        (3) Identify any other agency that will be invited, with the consent of the parent(s) or student who is an adult, to send a representative.

4. IEP Team (34 CFR § 300.321; Rules VII.B.4).

    a. For an IEP Team meeting that includes as a purpose the development of a postsecondary transition plan:

        (1) USDB must invite the student with a disability to attend the student's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the postsecondary transition services needed to assist the student in reaching those goals.

        (2) If the student does not attend the IEP meeting, USDB must take other steps to ensure that the student's preferences and interests are considered.

        (3) To the extent appropriate, with the consent of the parent(s) or adult student, USDB must invite a representative of any participating agency that is likely to be responsible for providing or may be paying for postsecondary transition services.

5. Definition of IEP (34 CFR § 300.320(b); Rules VII.B.5).

    a. For a student with a disability, ages 14 and older, an annual IEP goal related to the student's postsecondary transition service needs.

    b. Postsecondary transition services. For a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:

(1) Realistic and reasonable measurable postsecondary goals based upon annual age-appropriate postsecondary transition assessments related to training or education, employment, and, where appropriate, independent living skills;

(2) Postsecondary transition services (e.g., activities, experiences, specially designed instruction), that will reasonably enable the student to reach the postsecondary goals identified on the IEP;

(3) Multi-year courses of study that will reasonably enable the student to reach the postsecondary goals identified on the IEP;

(4) Evidence that the student was invited to the IEP Team meeting where transition services are to be discussed. If the student does not attend the IEP meeting, the IEP Team must take other steps to ensure the student's preferences and interests are considered;

(5) If appropriate, evidence that a representative of any participating agency that might be providing or paying for any postsecondary transition services was invited to the IEP Team meeting with written consent of the parent or adult student prior to the meeting; and

(6) Any modifications to graduation requirements, as permitted under R277-700.

c. Students with disabilities must have access to all school services related to college and career readiness planning and must be actively invited and included in school activities which address course planning (including online courses), graduation, and postsecondary education and employment (i.e., college week, scholarship opportunities, ACT, and concurrent enrollment) (R277-462).

6. Transfer of rights at age of majority (34 CFR §§ 300.320(c), 300.520; Rules VII.B.6).

a. Not later than the student's 17th birthday, the IEP must include a dated statement, signed by the student, parent, and an LEA Representative, that the student and the student's parent(s) have been informed of parent's rights under Part B of the IDEA (i.e. Procedural Safeguards) that will transfer to the student on reaching the age of majority (i.e., age 18), except

for a student with a disability who has been determined to be incompetent by a court.

b. All rights accorded to parents under Part B of the IDEA transfer to the student on the student's 18th birthday unless the IEP Team determines that:

   (1) The parent has obtained legal guardianship, power of attorney, or conservatorship; or

   (2) The student has married or become emancipated (in which case the rights transfer at that time).

c. All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution.

d. When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students, except for a student with a disability who has been determined to be incompetent under State law, or the student with a disability marries or becomes emancipated:

   (1) USDB must provide any notice required by Part B of the IDEA to both the individual and the parent(s); and

   (2) All other rights accorded to parents under Part B of the IDEA transfer to the student;

   (3) All rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution; and

e. Whenever a state transfers rights, USDB must notify the individual and the parent(s) of the transfer of rights within a reasonable time frame.

7. Termination of eligibility as a change of placement (34 CFR § 300.305; Rules VII.B.7).

   a. An evaluation is not required before the termination of a student's eligibility under this part due to graduation from secondary school with a regular high school diploma, or due to exceeding the age of eligibility for FAPE under Utah law.

b. For a student whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE under Utah law, USDB must provide the student with a summary of the student's academic achievement and functional performance which shall include a statement of the student's postsecondary goals, recommendations on how to assist the student in meeting the student's postsecondary goals, and a statement of when and how accommodations were used for instruction and assessment.

   (1) USDB develops the summary of student's academic achievement and functional performance with the IEP Team and additional individuals as appropriate (e.g., school counselors, CTE teachers, Pre-Employment Transition Service representatives).

c. Receipt of a general educational development (GED) credential does not end eligibility for FAPE.

8. Failure to meet postsecondary transition objectives (34 CFR § 300.324; Rules VII.B.8)

   a. If a participating agency, other than USDB, fails to provide the postsecondary transition services described in the IEP, USDB must reconvene the IEP Team to identify alternative strategies to meet the postsecondary transition objectives for the student set out in the IEP.

   b. Nothing relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any postsecondary transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that LEA (34 CFR § 300.324).

   c. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or an interagency agreement, to provide or pay for any services that are also considered special education or related services such as, but not limited to, services relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and postsecondary transition services, that are necessary for ensuring a FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or

through contract or other arrangement or as provided in an interagency agreement.

9. Students with disabilities in adult prisons (34 CFR § 300.324; Rules VII.B.9).

    a. The requirements relating to postsecondary transition planning and postsecondary transition services do not apply with respect to those students whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

    b. The obligation to make FAPE available to all students with disabilities does not apply with respect to students ages 18 through 21 to the extent that State law does not require that special education and related services under Part B of the IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility (34 CFR § 300.102):

        (1) Were not actually identified as being a student with a disability; and

        (2) Did not have an IEP under Part B of the IDEA.

    c. The exception does not apply to students with disabilities ages 18 through 21 who:

        (1) Had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or

        (2) Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability.

VII.C. **Graduation (UCA 53E-7-202; R277-705; Rules VII.C.)**

1. The obligation of USDB to make FAPE available to all students with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma (34 CFR §300.102(a)(3)(i)).

    a. The exception in these Rules VII.C.1 does not apply to students that have graduated from high school but have not been awarded a regular high school diploma (34 CFR § 300.102(a)(3)(ii)).

b. USDB may not withhold a regular high school diploma from a student who has met State or LEA graduation requirements.

c. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring prior written notice that must contain all the requirements in these Rules IV.D, including being given a reasonable time before the LEA proposed to terminate the student's eligibility under the IDEA by issuing the student a diploma (34 CFR § 300.503).

d. The term "regular high school diploma" does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a GED (34 CFR § 300.102(a)(3)(iv)).

2. A student with a disability served by a special education program shall satisfy high school completion or graduation criteria, consistent with State and federal law and the student's IEP. USDB may modify graduation requirements consistent with the student's IEP (R277-700-6(26)). USDB may award a student a certificate of completion consistent with state and federal law and the student's IEP.

3. The IEP Team must refer to the USBE Special Education Graduation Guidelines for additional information regarding modifying graduation requirements and IEP substitutions.

VII.D. Termination of Services Upon Reaching Age 22 (UCA 53E-7-201; R277-419-2(23)(B); Rules VII.D.)

1. If a student with a disability turns 22 any time after July 1, USDB must continue to provide FAPE until the end of that school year.

VIII. Responsibilities of the Utah State Board of Education

VIII.A. **General Supervisory Authority (Rules VIII.A.)**

1. In addition to the requirements listed below, USDB provides data as required for State and Federal reports and other State functions as listed in Rules VIII.
2. LEA special education program funding (Rules VIII.A.3.)
    a. USDB shall provide, either singly or in cooperation with other school districts or public institutions, a FAPE for all students with disabilities who are residents of the district or enrolled in a public charter school. The program shall include necessary special facilities, instruction, and education-related services. The costs of USDB's program, or share of a joint program, shall be paid from LEA funds.
    b. USDB shall receive funds under UCA 53F-2-1, State Funding--Minimum School Program (MSP), and other applicable laws to provide special education services in accordance with these Rules.
    c. USDB may, singly or in cooperation with other public entities, provide education and training for persons with disabilities who are younger than 3 or older than 22. The cost of such a program may be paid from fees, contributions, and other funds received by LEA for support of the program but may not be paid from public education funds.
    d. The requirements of Part B of the IDEA and these Rules are binding on each LEA and other public agency that has direct or delegated authority to provide special education and related services in the State of Utah.

VIII.B. **State Eligibility (Rules VIII.B.)**

1. Program options (34 CFR § 300.110; RULES VIII.B.3.)
    a. USDB takes steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to students who are nondisabled in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

VIII.C. **USBE Program Monitoring (Rules VIII.D.2-3.)**

1. USDB is involved in the UPIPS monitoring system, as required under Part B of the IDEA, R277-709, and R277-114-3.
2. USDB shall complete the required activities according to the timeline provided by the USBE staff.
3. Results of the monitoring process are publicly available, upon request.

VIII.D. **Personnel Qualifications (34 CFR § 300.156; Rules VIII.K.3-5.)**

1. Qualifications for special education teachers (34 CFR § 300.156; R277-301).
    a. The USBE and IDEA established qualifications for each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school.
    b. The qualifications established by USBE and IDEA ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school –
        (1) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii)), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher;
        (2) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
        (3) Holds at least a bachelor's degree.
    c. A teacher will be considered to meet the standard of this section if that teacher is participating in an alternate route to special education certification program under which:
        (1) The teacher:
            (a) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and

lasting impact on classroom instruction, before and while teaching;

(b) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(c) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(d) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(2) The State ensures, through its certification and licensure process, that the provisions of this section are met.

d. An adapted physical education endorsement, attached to a general or special education license, is requirement for educators to teach adapted physical education.

2. Related services personnel and paraeducators (R277-301, R277-306, and R277-324).

a. The qualifications include qualifications for related services personnel and paraeducators that:

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession:

(a) Meet the requirements; and

(b) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraeducators and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part, to be used to assist in

the provision of special education and related services under Part B of the IDEA to students with disabilities.

(4) Interpreters for the Deaf.

(a) Under UCA 35A-13-604, an individual is required to be certified as an interpreter if that individual provides interpreter services for students who are deaf and hard of hearing.

3. Notwithstanding any other individual right of action that a parent, student who is an adult, or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the USBE or USDB, or other public agency employee to be highly qualified, or to prevent a parent or adult student from filing a State complaint or due process complaint about staff qualifications with the State Director of Special Education.

VIII.E. Reporting on Suspension and Expulsion Rates (34 CFR § 300.170; Rules VIII.M.)

1. Through daily uploads, USDB shall report to the USBE staff, through the UTREx reporting system, on the rates of long-term suspensions and expulsions of students with disabilities and students who are nondisabled, including data disaggregated by race and ethnicity. The USBE staff shall examine these data to determine if significant discrepancies are occurring:
   a. Between students who are nondisabled and students with disabilities within USDB.
2. If discrepancies are occurring, the USBE staff shall review and, if appropriate, require revisions in both USBE and LEA policies, procedures, and practices to ensure compliance with Part B of the IDEA.
3. Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:
   a. The development and implementation of IEPs;
   b. The use of positive behavior interventions and supports; and
   c. Procedural safeguards.

VIII.F. **Prohibition on Mandatory Medication (34 CFR § 300.174; Rules VIII.X.)**

1. The USBE prohibits State and USDB personnel from requiring parents or student who is an adult to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act for a student as a condition of attending school, receiving an evaluation, or receiving services under Part B of the IDEA (21 USC § 812(c)).
2. Nothing in Rules VIII.X.1. shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parent(s) or student who is an adult regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services related to child find.

IX. LEA Eligibility and Responsibilities

IX.A. LEA Eligibility for IDEA Part B Funds (34 CFR §§ 300.211–212, 220; Rules IX.A.)

1. Federal special education funding is made available through a grant to the state from the OSEP. These funds are restricted and may only be used to provide services and program for students who qualify under Part B of the IDEA. Funds are available for students who are 3–5 (section 619 Preschool) and for students age 3– 21 (section 611 School-Age). Some funds are retained at the state level for administration and for state level activities. The remaining funds are distributed to Utah Local Education Agencies (LEAs) by formula.
2. Annually, the USBE staff shall notify USDB of the availability of Federal funds under Part B of the IDEA. In order to receive IDEA Part B flow-through funds, USDB must have in effect a USBE-approved special education program (Rules X.B.2.), including policies and procedures that are consistent with the Rules.
3. USDB must have a USBE-approved special education program (UCA 53F-2-307). USDB's program is approved by the state board when USDB 's special education policies and procedures are approved by the USBE special education staff and then by USDB's local board in a public meeting. The LEA must submit documentation of the local board's approval to the USBE special education staff.
4. The USBE approval of USDB's policies and procedures includes the approval of any supporting documentation necessary to ensure their implementation. All required minimum components of Rules IX.A.4.a-e are addressed in this policies and procedures manual.
5. As part of establishing eligibility for Part B funds, USDB must have revised policies and procedures in alignment with the IDEA 2004 final regulations and current rules within one year of the final Board approval of the Rules.
6. Policies and procedures submitted by USDB in accordance with this section, and approved by the USBE staff, remain in effect until any of the following occur (34 CFR § 300.220):
    a. USDB submits modifications to the USBE staff that the USBE or LEA determines are necessary;

(1) The provisions of the Rules apply to any modifications in an LEA's policies and procedures in the same manner and to the same extent as the LEA's original policies and procedures.

b. The USBE staff gives USDB notice of a new interpretation of the IDEA by Federal or State courts, or a change in Federal statute; or

c. There is an official finding of noncompliance with Federal or State law or regulations that requires a change in USDB 's policy and procedures.

7. USDB must have on file with the USBE staff information to demonstrate that it will make available to parents of students with disabilities or student who is an adult and to the general public all documents relating to the eligibility of the LEA under Part B of the IDEA (34 CFR § 300.212).

8. USDB creates annual improvement goals based on the State Performance Plan (SPP) and Annual Performance Report (APR) Indicators to improve outcomes for students with disabilities (Rules IX.A.4.d(2)(s)).

9. USDB collects and provides additional information which the USBE may require in order to meet Federal reporting requirements, including suspension and expulsion rates, LRE environments, disproportionality data, personnel information, and others (Rules IX.A.4.e).

IX.B. Use of Part B Federal Funds by the LEA (34 CFR §§ 300.200–206, 208; Rules IX.B.)

1. USDB submits a plan that provides assurances to the USBE that USDB meets each of the conditions in this section (34 CFR § 300.200).

2. USDB, in providing for the education of students with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established in Rules (34 CFR § 300.201).

3. Use of amounts (34 CFR § 300.202).

a. USDB must have on file with the USBE staff information to demonstrate that amounts provided to the LEA under Part B of the IDEA:

(1) Must be expended in accordance with the applicable provision of the Rules;

(2) Must be used only to pay the excess costs of providing special education and related services to students with disabilities consistent with the Rules; and

(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

4. The excess cost requirement prevents USDB from using funds provided under Part B of the IDEA to pay for all the costs directly attributable to the education of a student with a disability.

5. USDB meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students with disabilities before funds under Part B of the IDEA are used.

6. Maintenance of effort (MOE) (34 CFR § 300.203).

   a. Eligibility standard.

      (1) For purposes of establishing USDB's eligibility for an award for a fiscal year, the USBE must determine that USDB budgets for the education of students with disabilities for at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

         (a) Local funds only;

         (b) The combination of State and local funds;

         (c) Local funds only on a per capita basis; or

         (d) The combination of State and local funds on a per capita basis.

      (2) When determining the amount of funds that USDB must budget to meet the requirement in these Rules IX.B.6.a.(1), USDB may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 CFR §§ 300.204 and 300.205 that USDB:

         (a) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which USDB is budgeting; and

(b) Reasonably expects to take in the fiscal year for which USDB is budgeting.

(3) Expenditures made from funds provided by the Federal government for which the USBE is required to account to the Federal government or for which USDB is required to account to the Federal government directly or through the USBE may not be considered in determining whether USDB meets the standard in Rules IX.B.6.a.(1).

b. Compliance standard.

(1) Except as provided in 34 CFR §§ 300.204 and 300.205, funds provided to USDB under Part B of the IDEA must not be used to reduce the level of expenditures for the education of students with disabilities made by USDB from local funds below the level of those expenditures for the preceding fiscal year.

(2) USDB meets this standard if it does not reduce the level of expenditures for the education of students with disabilities made by USDB from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 CFR §§ 300.204 and 300.205:

(a) Local funds only;

(b) The combination of State and local funds;

(c) Local funds only on a per capita basis; or

(d) The combination of State and local funds on a per capita basis.

(3) Expenditures made from funds provided by the Federal government for which the USBE is required to account to the Federal government or for which USDB is required to account to the Federal government directly or through the USBE may not be considered in determining whether an LEA meets the standard of Rules IX.B.6.b.(1) and IX.B.6.b.(2).

c. Subsequent years.

(1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, USDB fails to meet the requirements of 34 CFR § 300.203 in effect at that time,

the level of expenditures required of USDB for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not USDB s reduced level of expenditures

(2) If, in any fiscal year beginning on or after July 1, 2015, USDB fails to meet the requirement of Rules IX.B.6.b.(2)(a) or IX.B.6.b.(2)(c) and USDB is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of Rules IX.B.6.a or IX.B.6.b, the level of expenditures required of USDB for the fiscal year subsequent to the year of the failure is the amount that would have been required under Rules IX.B.6.b.(2)(a) or IX.B.6.b.(2)(c) in the absence of that failure, not USDB's reduced level of expenditures.

(3) If, in any fiscal year beginning on or after July 1, 2015, USDB fails to meet the requirement of Rules IX.B.6.b.(2)(b) or IX.B.6.b.(2)(d) and USDB is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of Rules IX.B.6.a or IX.B.6.b, the level of expenditures required of USDB for the fiscal year subsequent to the year of the failure is the amount that would have been required under Rules IX.B.6.b.(2)(b) or IX.B.6.b.(2)(d) in the absence of that failure, not USDB's reduced level of expenditures.

d. Consequence of failure to maintain effort.

(1) If USDB fails to maintain its level of expenditures for the education of students with disabilities in accordance with Rules IX.B.6.b, the USBE is liable in a recovery action under section 452 of the GEPA (20 USC § 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which USDB failed to maintain its level of expenditures in accordance with Rules IX.B.6.b. in that fiscal year, or the amount of USDB's Part B subgrant in that fiscal year, whichever is lower.

(2) If the USBE is required to return funds to the Department because of USDB's failure to meet the Maintenance of Effort requirement, the USBE shall reduce the amount provided to the USDB's MSP Basic Program on a 1/12 basis.

7. Exception to maintenance of effort (34 CFR § 300.204).
    a. USDB may reduce the level of expenditures by USDB under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:
        (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
        (2) A decrease in the enrollment of students with disabilities.
        (3) The termination of the obligation of USDB, consistent with this part, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the USBE staff, because the student:
            (a) Has left the jurisdiction of USDB;
            (b) Has reached the age at which the obligation of USDB to provide a FAPE to the student has terminated; or
            (c) No longer needs the program of special education.
        (4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
        (5) The assumption of cost by the high-cost fund (i.e., Intensive Services fund) operated by the USBE staff.
8. Adjustment to local fiscal efforts in certain fiscal years (34 CFR § 300.205).
    a. For any fiscal year for which the allocation received by USDB under Part B of the IDEA exceeds the amount USDB received for the previous fiscal year, USDB may reduce the level of expenditures otherwise required by maintenance of efforts requirements by not more than 50 percent of the amount of that excess.
    b. Use of amounts to carry out activities under ESEA/ESSA.
        (1) If USDB exercises the authority to reduce the level of expenditures due to an increase in Part B funds, USDB must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the ESEA/ESSA, regardless

of whether USDB is using funds under the ESEA/ESSA for those activities.

c. The USBE staff must prohibit USDB from reducing the level of expenditures for a fiscal year, if the USBE staff determines that:

(1) USDB is unable to establish and maintain programs of FAPE that meet the requirements of Part B of the IDEA, or

(2) The USBE staff has taken action against USDB under Section 616 of the IDEA and subpart F of the regulations (Monitoring, Technical Assistance, and Enforcement).

d. The amount of funds expended by USDB for mandatory or voluntary Coordinated Early Intervening Services shall count toward the maximum amount of expenditures that USDB may reduce under the requirements of this section.

9. If the USBE staff determines that USDB is not meeting the requirements of Rules, the USBE staff may prohibit USDB from treating funds received under Part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the State constitution or State statute.

10. School-wide programs under Title I of the ESEA/ESSA (34 CFR § 300.206).

a. USDB may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the ESEA/ESSA, except that the amount used in any school-wide program may not exceed the amount received by USDB under Part B of the IDEA for that fiscal year:

(1) Divided by the number of students with disabilities in the jurisdiction of the LEA; and

(2) Multiplied by the number of students with disabilities participating in the school-wide program.

b. The funds described in this section must be considered as Federal Part B funds for purposes of the calculations required for excess costs and supplanting.

c. The funds may be used without regard to the requirements of 34 CFR § 300.202(a)(1) of the IDEA.

d. All other requirements of Part B of the IDEA must be met by USDB using Part B funds for school-wide programs under section 1114 of the ESEA/ESSA, including ensuring that students with disabilities in school-wide program schools:

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to students with disabilities under Part B of the IDEA.

IX.C. Charter Schools and Their Students (34 CFR § 300.209; Rules IX.C.)

1. Nothing in these Rules prohibit school districts and charter schools from developing a Memorandum of Understanding (MOU) to address student specific needs and/or placements.

IX.D. Coordinated Early Intervening Services (CEIS) (34 CFR § 300.226; Rules IX.D.)

1. USDB may not use more than 15 percent of the amount USDB receives under Part B of the IDEA for any fiscal year, less any amount reduced by the LEA pursuant to maintenance of effort, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated early intervening services (CEIS), which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
2. In implementing CEIS, USDB may carry out activities that include:

a. Professional learning (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavior interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

3. CEIS may not be used to limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a student suspected of having a disability.
4. USDB that develops and maintains coordinated early intervening services (either mandatory or voluntarily) under this section must annually report to the USBE staff on:
    a. The number of students served under this section who received early intervening services; and
    b. The number of students served under this section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.
5. Funds made available to carry out this section may be used to carry out coordinated early intervening services aligned with activities funded by, and carried out under, the ESEA/ESSA if those funds are used to supplement, and not supplant, funds made available under the ESEA/ESSA for the activities and services assisted under this section.

IX.E. Personnel Development (34 CFR § 300.207; Rules IX.E.)

1. USDB must ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements related to personnel qualifications and section 2122 of the ESEA/ESSA, as well as 34 CFR § 300.156; R277-304, R277-306, R277-320, and R277-324.
2. Paraeducators, when used to carry out Part B of the IDEA, must be appropriately trained and supervised, and utilized in accordance with the USBE Paraeducator Standards.
    a. USDB shall provide documentation of training and supervision to USBE staff upon request.

IX.F. Funded Prevalence of Disabling Conditions (UCA 53F-2-307; Rules IX.F.)

1. When calculating and applying the growth factor, a school district's total special education average daily membership (ADM) for a given year is limited to the following percentage of the school district's total student ADM for the same year:

a. For a school district in a county of the first, second, or third class, 14%; and

b. For a school district in the county of the fourth, fifth, or sixth class, 20%.

IX.G. LEA Provision of FAPE (34 CFR § 300.101; Rules IX.G.)

1. USDB remains obligated to provide a student with a disability with a FAPE even when USDB has not personally engaged with the student during the prior ten consecutive days and therefore may no longer count the student as an eligible student under pupil accounting (R277-419).
2. USDB will oversee the caseload of each special educator (including psychologists, social workers, speech language pathologists, occupational therapists, physical therapists, adapted physical education specialists, and any other related servers) to ensure that a FAPE is available to all eligible students with disabilities.

IX.H. Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices (34 CFR § 300.113; Rules IX.H.)

1. Hearing aids. USDB must ensure that hearing aids worn in school by students with hearing loss, including deafness, are functioning properly.
2. External components of surgically implanted medical devices.
    a. Subject to Rules IX.H.2.b, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
    b. For a student with a surgically implanted medical device who is receiving special education and related services, USDB is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

IX.I. Educator License Requirements (R277-301, R277-304, R277-306, and R277-320; Rules IX.I.)

1. Professionals providing services to students with disabilities must hold a Utah Professional Educator License or Endorsement in the area in which they provide services. This includes special education teachers, speech/language

pathologists, school psychologists, school social workers, and other professionals. Physical and occupational therapists must hold appropriate Utah licensure. USDB superintendent or charter school administration shall be responsible for the evaluation of the appropriateness of licenses and endorsements when assigning staff members. USDB refers to the USBE Teaching, Leadership, and Paraeducator Standards.

2. "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:
    a. Early Childhood;
    b. Elementary;
    c. Secondary;
    d. School Leadership
    e. Career and Technical Education or "CTE";
    f. School Counselor;
    g. School Psychologist;
    h. Special Education;
    i. Preschool Special Education;
    j. Deaf Education;
    k. Speech-Language Pathologist;
    l. Speech-Language Technician;
    m. School Social Worker; and
    n. Audiologist. (R277-301-2.7(a)).
3. Individuals providing psychological evaluation services for students with disabilities must hold a Utah education license for school psychologists or State licensure and meet the assessment publisher’s criteria for administration.
4. An adapted physical education endorsement is required for special educators and general educators to teach adapted physical education.

IX.J. Purchase of Instructional Material in Accessible Formats (34 CFR § 300.210; Rules IX.J.)

1. An LEA that chooses to coordinate with the NIMAC, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the USBE under Rules VIII.W.
2. If USDB chooses not to coordinate with the NIMAC, USDB must provide an assurance to the USBE that USDB will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
3. Nothing in this section relieves USDB of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
4. For all purposes of this section, the USBE defines timely manner as follows: the USBE and LEAs must take reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other students receive instructional materials.

IX.K. School Districts to Provide USDB Class Space (UCA 53E-8- 410; Rules IX.K.)

1. If USDB has students who reside within the school district's boundaries and are served by the USDB shall make a good faith effort to provide the USDB with space required for programs offered by the USDB.

X. Special Education Funding

1. The USBE has a responsibility under both Federal and State law to monitor implementation of the IDEA by LEAs through a system of general supervision that improves educational results and functional outcomes and ensures that public agencies meet program requirements. The special education program that is funded both from federal and state funds and it is critical to understand the similarities and differences of these funding sources.
2. *Federal special education funds* means funds paid to the State under IDEA Part B for the purposes of special education.
3. *State special education funds* means state funds appropriated to public education for the purposes of special education.
4. Federal special education funds are calculated, allocated, and classified differently than state special education funds. These Rules outline the regulations, restrictions, and allowable costs and activities applicable to each funding source; some requirements are the same for both funding sources and some provisions apply only to one or the other.

X.A. State Special Education Funds Generally (UCA 53F-2-307; Rules X.A.1-2.)

1. State special education funds may be spent only for direct costs and construction or altering existing facilities, as outlined in the Rules.
    a. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.
    b. Constructing facilities or altering existing facilities if:
        (1) The costs are necessary costs and reasonable costs;
        (2) The costs are not for the general purpose of bringing facilities into compliance with:
            (a) Section 504 of the Rehabilitation Act of 1973; or

(b) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.;

(3) The construction or alteration meets the needs of one or more students with disabilities; and

(4) USDB submits an application for review by the state board;

(5) The state board approves the expenditure in accordance with rules, including requirements that:

(a) USDB has not been identified with significant disproportionality;

(b) USDB has no outstanding uncorrected findings of non-compliance;

(c) USDB has no dispute resolution findings related to FAPE in the past year;

(d) USDB has been determined to "meet requirements" based on the USBE's programmatic Results Driven Accountability/Annual Performance Report (RDA/APR); and

(e) No other evidence, e.g., from school accreditation, fiscal audits, etc., indicators that USDB is not adequately providing FAPE.

2. State special education funds are appropriated to the MSP and provide restricted (categorical) monies that must be spent for the education of students with disabilities.

X.B. Allocation of State Special Education Funds for Programs for Students with Disabilities (UCA 53F-2-307; R277-479; Rules X.B.3.)

1. USDB must be current with the UPIPS monitoring requirements, including correction of noncompliance within one year of notification, annual Corrective Action Plan (CAP) and PIP reports, and desk audit submissions to be eligible for State special education funds.

X.C. Special Education Add-On Allowable Use (Fund1205) (UCA 53F-2-307(1); Rules X.C.)

1. USDB must use funds in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities.

X.D. Special Education Self-Contained Allowable Use (Fund 1210) (UCA 53F-2-307, -308(3); Rules X.E.)

1. *Self-contained* means a student in public-school with an IEP or a youth in custody/care (YIC) who receives 180 minutes or more of special education or YIC services during a typical school day per R277-419-2(35).
2. USDB must use Special Education Self-Contained funds only for direct costs attributable to the cost of the special education of students with disabilities whose placement is a special class or self-contained environment.

X.E. State Special Education Impact Aid Allowable Use (Fund 1225) (UCA 53F-2-307(1); Rules X.I.)

1. Must be used for direct costs attributable to the cost of administering the special education program as follows:
    a. Costs for students in state custody (prisons, detention facilities, and the state hospital)
    b. Additional costs attributable for services to students with low-incidence disabilities
2. Funds must be used in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities.

X.F. State Special Education Extended School Year (ESY) Allowable Use (Fund 1220) (UCA 53F-2-308(2); Rules X.K.)

1. Must be used for direct costs attributable to the cost of ESY provided to students with disabilities, determined by the student's IEP team to require ESY) in order to receive a FAPE and in accordance with R277-751.
2. Funds must be used in accordance with Rules X.B. and to cover the direct costs of providing special education to students with disabilities in accordance with R277-751.

X.G. State Extended School Year Stipend For Special Educators (EYSE) Allowable Use (Fund 1278) (UCA 53F-2-310; Rules X.M.)

1. Must be used for salaries and allowable benefits of Special Education Teachers, or Speech Language Pathologists who provide eligible services under R277-525- 2.
2. A special educator receiving a stipend shall: (a) work an additional day beyond the number of days contracted with the special educator's school district or school for each daily stipend; (b) schedule the additional days of work before or after the school year; and (c) use the additional days of work to perform duties related to the IEP process, including: administering student assessments, conducting IEP meetings, writing IEP's, conferring with parent(s) or student who is an adult, and preparing and maintaining records.

X.H. State Special Education Intensive Services Allowable Use (Fund1230) (UCA 53F-2-309(1); Rules X.O.)

1. Must be used for direct costs attributable to the cost of implementing IEPs for students with disabilities.
2. Cost of services to a student with a disability must be in excess of three times the annual average per pupil expenditure (APPE) as calculated by USBE Financial Operations.
3. Costs must meet the eligibility requirements outlined in R277-752.

X.I. State Special Education Funds Allowable Use (UCA 53F-2-307; Rules X.P.)

1. State special education funds may be spent only for direct costs and construction or altering existing facilities as outlined in Rules X.A. and X.B., Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities (Rules X.A.1.).
2. The costs of providing for specially designed instruction, related services, and supplementary aids and services provided in a regular class or other

education- related setting to a student with a disability in accordance with the IEP of the student are allowable.

3. The costs of providing inclusive special education preschool services are an allowable excess cost.
4. The costs of including peer models in IEP services that require a peer model are allowable.
5. The costs of providing co-teaching, in which both a licensed general educator and licensed special education teacher plan and provide specially designed instruction are allowable.
6. USDB follows the allowable use of state special education funds as listed in Rules X.P.6

X.J. Allowable Costs for Federal (IDEA) Special Education Funds (Rules X.R.1., 4-8.)

1. Funds paid to the State under IDEA Part B for the purposes of special education ("Federal special education funds") are calculated, allocated, and classified according to 34 CFR §300.705.
2. USDB will use Federal special education funds for the costs of providing for specially designed instruction, related services, and supplementary aids and services provided in a regular class or other education- related setting to a student with a disability in accordance with the IEP of the student are allowable.
3. USDB will use Federal special education funds for the costs of providing inclusive special education preschool services are an allowable excess cost under IDEA (34 CFR § 300.16).
4. USDB will use Federal special education funds for the costs of including peer models in IEP services that require a peer model are allowable.
5. USDB will use Federal special education funds for the costs of providing co-teaching, in which both a licensed general educator and licensed special education teacher plan and provide specially designed instruction are allowable.
6. USDB follows the allowable use of Federal special education funds, as listed in Rules X.R.8.