

NOTABLE CHANGES AND CLARIFICATIONS MADE TO THE UTAH STATE BOARD OF EDUCATION RULES IN SPECIAL EDUCATION

Effective as of 10/7/2016

Special Note: *The Utah State Office of Education (USOE) is now the Utah State Board of Education (USBE).*

Definitions

- The *IEP team* will include at least 1 general education teacher, if the student is or may be participating in the general education environment.
- *Special Education Services* was clarified to be services provided directly to the student, and it does not include teachers consulting with each other, monitoring the student's grades or work completion.

Identification, Location, and Evaluation (IEP Handbook, Section 3 & 4, Pg. 11-22)

- Charter schools may not refer students to their local school districts to be identified and evaluated as a student in need of special education and related services, including IEP or placement needs.
- Students who enter into custody of the Division of Child and Family Services (DCFS) will be evaluated within 30 calendar days, once DCFS has made the request.
- The training and knowledge of personnel, when evaluating a student, is based on the requirements of the specific assessment used. This may mean having the appropriate degree or having higher education coursework in tests and measures.
- The Utah Schools for the Deaf and Blind is clarified as a resource for the assessment of students with visual and hearing impairment.
- When going through reevaluation, teams must document the data reviewed, write an evaluation report and complete the eligibility determination, even when the team agrees that a reevaluation is unnecessary.
- School districts and charter schools who are evaluating for the Specific Learning Disability category are able to continue using a discrepancy model until July 2019, in addition to other approved methods.

IEP Development and Service Delivery (IEP Handbook, Section 5, Pg. 23-36)

- The signatures on the IEP denote participation in the development of the IEP.
- Emergency safety interventions [*the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others, and the intervention is not for disciplinary purposes*] may only be included in an IEP as a planned intervention after: (1) Other, less restrictive, means have been attempted; (2) A Functional Behavioral Assessment, FBA, has been done, and; (3) A Positive Behavior Plan, BIP, based on data analysis, has been written and used for the student. These must still comply with [Rule R277-609](#) with regards to time limitations and notifications to parents.
- IEP teams should discuss and address student participation in other general education activities and courses beyond the grade-level Core Standards. For example, health and maturation, suicide prevention classes, or Career and Technical Education programs.
- IEP teams should consider a continuum of alternative placement options for students in preschool programs.
- School districts and charter schools will provide parents written prior notice of proposal or refusal to provide ESY services, with enough time to allow parents to access dispute resolution options if they are in disagreement with the decision.
- A student, under the age of 20, at the recommendation of the IEP team, is able to participate in public school programs or extracurricular activities and not be denied participation solely because of his/her age.

Procedural Safeguards: Parent and Adult Student's Rights (IEP Handbook, Section 8, 13 & 14, Pg. 47-53 & 71-77)

- State complaints will be filed with, and investigated by, the Utah State Director of Special Education. The Director will provide a decision on the complaint, and this is not subject to appeal.
- Prior to seeking a due process hearing, the parties of the dispute will make a good faith effort to resolve the dispute informally at the school building level. If unsuccessful, the due process hearing request can be made.
- An expedited due process hearing, within 20 days of the due process complaint filing, may be requested if: (1) The parent disagrees with the outcome of a manifestation determination hearing or other disciplinary outcome resulting in a placement decision, or if (2) The school district or charter school believes that keeping the current placement of the student would likely result in injury to the student or others. A decision on this must be made within 10 school days of the hearing date.
- Students who have become emancipated, have married, or have turned 18 without being determined to be incompetent by a court, will be given a transfer of their rights.
- School districts or charter schools must keep their own copy of the student's records for three years after they transfer the student's records to another charter school or school district.

Students with Disabilities in Other Settings

- Students who are simultaneously enrolled in both home school or private school and a public school are entitled to special education and related services. The IEP team must consider the amount of time and courses needed to provide a Free and Appropriate Public Education (FAPE).
- Students enrolled in Adult education remain entitled to special education and related services until: (1) Determined ineligible, (2) Graduate with a regular high school diploma, or (3) Reach maximum age (i.e., age 22). The school district of residence is responsible for FAPE.
- Students enrolled in public education virtual settings remain entitled to special education and related services until: (1) Determined ineligible, (2) Graduation with a regular high school diploma, or (3) Reaching maximum age (i.e., age 22). The public educational setting where the student is enrolled is responsible for providing FAPE.
- IDEA applies to students who are residing in nursing homes or who may be in state custody/care.
- With some exceptions, FAPE, special education and related services under IDEA, applies to students ages 18-21 who are incarcerated in adult prisons.

Transition (IEP Handbook, Section 9 & 10, Pg. 55-67)

- Transition plans are developed, as part of an IEP, for students ages 14 and older. The student must receive an invitation to his/her transition meeting.
- No later than on the student's 17th birthday, the student, parent and school district or charter school representative will sign a statement that both have been informed of the transfer of rights from the parent to the student at age of majority (age 18), unless the student has been determined incompetent by a court.
- Students must have access to school counselors for the purpose of planning and be actively invited to school activities that address course planning, graduation and post-secondary education.
- Special education services will end: (1) Before December 31st (at the beginning of the school winter's holiday) for students turning 22 years old on or after the beginning of the school year, or; (2) At the end of the school year, if the student turns 22 after December 31st.

This is a simplified explanation of some of the changes. For more details, you may wish to visit

<http://schools.utah.gov/sars/Laws/Rules.aspx>