

**MODEL PROCEDURES  
FOR THE EDUCATION OF  
CHILDREN WITH DISABILITIES:**

**NARRATIVE VERSION**

**April 2003**

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## FREE APPROPRIATE PUBLIC EDUCATION (FAPE) 3301-51-02

### Relevant Definition:

- Free Appropriate Public Education (FAPE) Rule 3301-51-01(R)

### Required Form(s):

- Individualized Education Program (IEP)
- Prior Written Notice to Parents

- A. The school district shall provide a free appropriate public education (FAPE) to all students, ages 3 through 21 years, who are eligible for special education and related services. FAPE means special education and related services that are provided at public expense without charge, that meet the State rules for the education of students with disabilities, and are documented on and provided in conformity with the individualized education program (IEP).
- B. The school district will ensure that:
- 1) An IEP is developed before the child's third birthday for each eligible child transitioning from early intervention services to preschool special education services. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services will begin. The school district will ensure that implementation of the child's IEP shall occur no later than the beginning of the following school year;
  - 2) A child with a disability who has been suspended or expelled for more than a total of 10 school days in the same school year is provided services, to the extent necessary, to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP; and
  - 3) FAPE will be provided by the school district to each child with a disability who needs special education and related services regardless of whether the child is advancing from grade to grade.
- C. The school district's obligation to make FAPE available shall not end until the child graduates from high school with a regular high school diploma or reaches the age of 22. The school district shall ensure that prior written notice is provided to the parents and the child at the age of majority (18 years old) prior to graduation in accordance with Rule 3301-51-05(C)(5) of the *Operating Standards*.
- D. If the school district provides services to preschool children with disabilities it will develop and maintain interagency agreements with, at a minimum, programs operated by Head Start, and the Departments of MR/DD and Health.

## CHILD FIND 3301-51-03

**Relevant Definition:**

- None

**Required Form(s):**

- None

**Child Identification [Rule 3301-51-03(A) and (B)]**

- A. Each school district shall identify, locate, and evaluate, in accordance with Rule 3301-51-03 (A)(1)-(3) of the *Operating Standards*, all children birth through 21 years of age residing within the school district who have a disability, regardless of the severity of their disability, and who are in need of special education and related services. The district may use methods such as screening of children, informational packets, and/or public notices in district mailings to parents as part of its child find activities.
- B. The district shall identify, locate and evaluate:
- 1) Children attending private, including parochial schools;
  - 2) Highly mobile children with disabilities (children who are homeless and/or from migrant families); and
  - 3) Children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade.
- C. If the school district conducts a major Child Find activity, public notice will be given in accordance with Rule 3301-51-03(B)(1) and (2) of the *Operating Standards*.
- D. The school district shall collaborate with the county Family and Children First Council-Help Me Grow when necessary to ensure the evaluation of children with disabilities, birth through age two. While the extent of actual school district personnel involvement in Child Find activities for this age group may vary, the responsibility for ensuring that requirements relating to the identification, location and evaluation of children remains with the school district of residence in accordance with the interdepartmental agreement between the Ohio Department of Education and the Ohio Department of Health.

**Data Reporting Requirements [Rule 3301-51-03(C)-(F)]**

- A. The school district shall maintain an education management information system (EMIS) and shall submit required data to the Ohio Department of Education in the manner prescribed by the Department in accordance with Rule 3301-14-01 of the Administrative Code.
- B. Submitted data shall be examined by the school district and the Ohio Department of Education to determine if significant disproportionality exists with respect to race in the identification or placement in educational settings of children with disabilities.
- C. When disproportionality exists the school district shall, if appropriate, review and revise its practices used in the identification or placement of children with disabilities.

## CONFIDENTIALITY 3301-51-04

### Relevant Definition:

- Personally Identifiable Information Rule 3301-51-01(FF)

### Required Form(s):

- None

### General [Rule 3301-51-04(A)]

The school district shall protect the confidentiality of any personally identifiable information about children with disabilities in regard to the collection, storage, disclosure, and destruction of that information.

### Access to Educational Records [Rule 3301-51-04(B)]

- A. The parents or a designated representative of the parent may call the school district or the child's school to request a review of their child's records. They are entitled to inspect and review any educational records about their child prior to an IEP meeting or any due process hearing without unnecessary delay and within 45 days after the request is received by the school district.
- B. Reasonable parental requests for explanations and interpretation of their child's record shall be honored by school personnel (eg. school psychologists, related service providers, special education teachers, and administrators).
- C. The school district shall presume that a parent has authority to review and inspect his/her child's record unless the parent does not have authority under applicable state law.
- D. The school district may charge a reasonable fee for copies of records if it does not prevent the parent from inspecting or reviewing the record. A charge cannot be made for retrieval of information.
- E. A list of types and location of records maintained, collected and used by the school district shall be provided to parents upon request.
- F. A record shall be maintained of parties obtaining access to records in accordance with Rule 3301-51-04 (C)(2) of the *Operating Standards*.
- G. Where any educational record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or be informed of that specific information.

### Amendment of Records at Parent's Request and Results of Records Hearing [Rule 3301-51-04(D) and (E)]

- A. A parent who believes that his/her child's record is inaccurate and/or misleading and violates the privacy or other rights of his/her child may request an amendment of the child's record.
- B. The superintendent or designee must make a decision within a reasonable period of time whether to amend the information. If the decision is not to amend the information, the parent shall be informed and advised of his/her right to a records hearing.

- C. A records hearing shall be conducted within a reasonable time period after the school district has received a written request in accordance with Rule 3301-51-04(D)(4)(a)-(f) of the *Operating Standards*.
- D. The hearing may or may not result in the record being amended. If the record is not amended the parent shall be informed of the right to place a statement in his/her child's record commenting on the information or setting forth any reasons for disagreeing with the decision. Any written statement the parent includes in the child's record shall be maintained as part of the child's record as long as the record or contested portion is maintained. If the records of the child or the contested portion is disclosed to any party, the statement must be disclosed.

#### **Prior Consent for Disclosure [Rule 3301-51-04(F)]**

- A. The school district shall obtain written parental consent prior to disclosing any personally identifiable information from the educational records of a student, other than directory information, in accordance with Rule 3301-51-04(F)(1)(a)-(c) of the *Operating Standards*.
- B. If a parent refuses to provide consent, the school district may initiate due process procedures.
- C. The school district may disclose personally identifiable information without written parent consent in accordance with Rule 3301-51-04(F)(3) of the *Operating Standards*:
  - 1) To other school officials, including teachers, within the school district, county board of MR/DD or other educational agency who have been determined by the district, to have legitimate educational interests;
  - 2) To officials of another school, school district, county board of MR/DD or other educational agency where the student seeks or intends to enroll under the circumstances set forth in Rule 3301-51-04(F)(3)(b);
  - 3) To Federal and State officials in connection with an audit or evaluation of Federal or State-supported education programs, or in connection with the enforcement of or compliance with Federal legal requirements that relate to these programs;
  - 4) In connection with financial aid for which a student has applied or which a student has received, if the information is necessary for such purposes as set forth in Rule 3301-51-04(F)(3)(d);
  - 5) To others specified in the Family Educational Rights and Privacy Act (FERPA).
  - 6) When a disclosure is made pursuant to this section, the school district or other educational agency shall, upon request, provide a copy of the record that is disclosed to the parent and to the student, if so requested by the student's parent.

#### **Transfer of Records to Law Enforcement and Judicial Authorities [Rule 3301-51-04(G)]**

When reporting a crime committed by a child with a disability, copies of the child's special education and disciplinary records shall be transmitted for consideration by the appropriate authorities to the extent permitted by FERPA.

#### **Safeguards [Rule 3301-51-04(H)]**

- A. The school district shall provide training to district personnel regarding the confidentiality policies and procedures defined in this section.
- B. The superintendent shall designate a district-level administrator responsible for ensuring confidentiality of personally identifiable information for students with disabilities.

- C. A current listing of the names and positions of employees who may have access to the personally identifiable information shall be maintained by the district.

**Destruction of Information [Rule 3301-51-04(I)]**

- A. Parents and a child who has reached the age of majority shall be informed when personally identifiable information is no longer needed to provide educational services to the child.
- B. Information must be destroyed at the request of the parents. However, a permanent record of the student's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed may be maintained without time limitation.

**Disciplinary Information [Rule 3301-51-04(J)]**

Records of a child with a disability shall include a statement of any current or previous disciplinary action and shall be transmitted to the same extent such information is included and transmitted for nondisabled children.

## PROCEDURAL SAFEGUARDS 3301-51-05

### Relevant Definition:

- Calendar day [Rule 3301-51-01(J)(1)]
- Business day [Rule 3301-51-01(J)(2)]
- School day [Rule 3301-51-01(J)(3)]
- Illegal drug [Rule 3301-51-01(T)]
- Change of placement for disciplinary purposes [Rule 3301-51-05(K)(1)(a)]
- Interim alternative educational setting [Rule 3301-51-05(K)(1)(b)]
- Parent [Rule 3301-51-01(BB)]
- Weapon [34 CFR 300.520(d)(3)]

### Required Form(s):

- Prior Written Notice to Parents
- Parent Invitation
- Manifestation Determination Review

### General [Rule 3301-51-05(A)]

The district shall ensure that children with disabilities and their parents are provided procedural safeguards.

### Opportunity to Examine Records [Rule 3301-51-05(B)(1)]

The school district shall provide the parents of a child with a disability the opportunity to inspect and review all educational records in accordance with Rule 3301-51-04(B) of the *Operating Standards*.

### Parent Participation in Meetings [Rule 3301-51-05(B)(2) and (3)]

- A. The school district shall provide the parents of a child with a disability the opportunity to participate in meetings for the purposes of identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to the child.
- B. The school district shall:
  - 1) Notify parents of the meeting early enough so they will have an opportunity to attend; and
  - 2) Schedule the meeting at a mutually agreed upon time and place.
  - 3) If neither parent can attend, the school district shall use other methods to ensure parent participation, including individual or conference telephone calls.
- C. It is not required to invite parents to participate in informal or unscheduled conversations involving school personnel about such issues as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP.

### Notice to Parents (Prior Written Notice) [Rule 3301-51-05(C)]

- A. The school district shall provide prior written notice to the parent of a child with a suspected or confirmed disability within thirty days of referral date or within a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.



- B. The notice must include:
  - 1) A description of the action proposed or refused by the district;
  - 2) An explanation of why the district proposes or refuses to take the action;
  - 3) A description of any other options that the district considered and the reasons why those options were rejected;
  - 4) A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action; and
  - 5) A description of any other factors that are relevant to the district's proposal or refusal;
  - 6) A statement that the parents of a child with a disability have protection under the procedural safeguards of the *Operating Standards*, and if this notice is not an initial referral for evaluation, the means by which a copy of the Procedural Safeguards Notice can be obtained; and
  - 7) Sources for parents to contact to obtain assistance in understanding the procedural safeguards.
- C. The school district will ensure that the prior written notice will be provided in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it clearly not feasible to do so. If the native language or other mode of communication is not a written language, the school shall take steps as set forth in Rule 3301-51-05(C)(8)(a)-(c).
- D. If the action that is proposed by the school district also requires parental consent such as an evaluation, the district may give prior written notice at the same time it requests parent consent.
- E. The IEP shall serve as written notice for provision of special education and related services when a parent is in agreement with the IEP.
- F. When a parent disagrees with the IEP, a Prior Written Notice form shall be completed and provided to the parent prior to the implementation of the IEP.

#### **Procedural Safeguards Notice [Rule 3301-51-02(D)]**

- A. A copy of the procedural safeguards notice shall be given to the parents of a child with a disability at minimum upon:
  - 1) Initial referral for evaluation;
  - 2) Each notification of an IEP meeting except when the school district can document the parents have a copy of the notice and have not requested another copy;
  - 3) Reevaluation;
  - 4) Receipt of request for a due process hearing; and
  - 5) Change of placement for disciplinary action.
- B. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards and the State complaint procedures as outlined in Rule 3301-51-05(D)(2) of the *Operating Standards*.
- C. The school district may use the services of a parent mentor to assist in explaining the Procedural Safeguards Notice to parents.

### **Parental Consent [Rule 3301-51-05(E)]**

- A. The school district shall ensure that informed written parental consent is obtained before:
  - 1) Conducting an initial evaluation;
  - 2) Initially providing special education and related services;
  - 3) Conducting a reevaluation when new assessment is needed; or
  - 4) Making a change in placement.
- B. Informed parental consent need not be obtained for a reevaluation, or change of placement, if district can demonstrate that it has taken reasonable measures to gain consent from the parent as described in Rule 3301-51-07(F) of the *Operating Standards*, and that the parent has failed to respond.
- C. If the parent refuses to consent for initial evaluation, reevaluation, or a change of placement, the district may continue to pursue those evaluations or a change in placement by using the due process or mediation procedures.
- D. A change of placement is defined as a change from one option on the continuum of alternative placements to another. The continuum of alternative placements as described in Rule 3301-51-01(H) of the *Operating Standards*, includes:
  - 1) Regular classes;
  - 2) Supplemental services (such as resource room or itinerant services in conjunction with regular class);
  - 3) Special classes;
  - 4) Special schools;
  - 5) Home instruction;
  - 6) Hospitals; and
  - 7) Institutions.
- E. For preschool children the continuum of alternative placements includes services delivered in center-based, itinerant or a combination of both in accordance with Rule 3301-51-09(B)(2) of the *Operating Standards*.

### **Independent Educational Evaluation [Rule 3301-51-05(F)]**

- A. Upon parent request for an independent educational evaluation (IEE), the school district shall follow procedural requirements for an IEE as described in Rule 3301-51-05(F)(1)-(9) of the *Operating Standards*.

### **Complaint Procedures [Rule 3301-51-05(G)]**

The school district shall ensure that the procedural safeguards notice includes a description of the State's complaint procedures as defined in Rule 3301-51-05(G) of the *Operating Standards*.

### **Placement of Children in Nonpublic Schools by Parents if FAPE is at Issue [Rule 3301-51-05(H)]**

The school district shall follow the actions outlined in Rule 3301-51-05(H)(1)-(5) of the *Operating Standards*, when the parents of a child with a disability places the child in a nonpublic school and there is an issue of whether or not the school district has provided FAPE to that child.

### **Surrogate Parents [Rule 3301-51-05(I)]**

- A. If a school district determines that no parent as defined in Rule 3301-51-01(BB) of the *Operating Standards* can be identified, the parents whereabouts cannot be discovered after reasonable efforts, or the child is a ward of the State, the school district shall assign a surrogate parent to represent the child.
- B. A surrogate parent shall be assigned as soon as possible and within thirty calendar days of the date that it is determined that the child is in need of the surrogate.
- C. The district of residence maintains the ultimate responsibility for the assignment of a surrogate parent. If requested by the district of residence and mutually agreed upon, the district of attendance, county board of MR/DD or other educational agency may appoint the surrogate parent.
- D. The school district shall ensure that a person selected as a surrogate
  - 1. Is not an employee of a State, local or any other public agency that is involved in the education or care of the child;
  - 2. Has no interest that conflicts with the interest of the child he or she represents;
  - 3. Has knowledge and skills that ensure adequate representation of the child; such as, but not limited to, a foster parent, relative, or a friend in the community;
  - 4. To the extent possible, matches the child's cultural and linguistic background; and
  - 5. Has successfully completed the training prescribed by the Ohio Department of Education prior to acting on behalf of the child.
- E. The surrogate parent shall represent the child in all matters related to the identification, evaluation, educational placement and the provision of FAPE to the child.
- F. The school district shall review the appointment of each child's surrogate parent at least annually.

### **Transfer of Parental Rights at Age of Majority [Rule 3301-51-05(J)]**

Each school district shall follow the actions outlined in Rule 3301-51-05(J)(1)-(5) of the *Operating Standards*, when transferring parental rights to students with disabilities upon reaching the age of majority (18 years of age).

### **Disciplinary Procedures [Rule 3301-51-05(K)]**

- A. When disciplinary procedures are initiated for a child with a disability that are applicable to all children, special education and disciplinary records of the child with a disability will be transmitted to the school personnel who will make the decision regarding the action.
- B. A child with a disability who has been suspended or expelled for more than a total of 10 school days in the same school year is provided services, to the extent necessary, to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP; and

- C. If a student without a disability is provided services when removed for less than 10 school days in the school year, a student with a disability must also be provided services if similarly removed.

**Removal (suspension/expulsion) for More Than Ten (10) Days in a School Year [Rule 3301-51-05(K)(5)]**

The school district will follow all applicable procedures in accordance with Rule 3301 51-05(K) of the *Operating Standards*, when it removes a child with a disability from his/her current educational placement for more than ten school days in a given school year.

**Manifestation Determination [Rule 3301-51-05(K)(7)]**

When a school district conducts a manifestation determination for disciplinary reasons, the school district will follow all applicable procedures found in Rule 3301-51-05(K)(7)(a)-(e) of the *Operating Standards*.

**Expedited Due Process Hearing [Rule 3301-51-05(K)(8)-11)]**

When a parent and/or a district requests an expedited due process hearing due to a disagreement with a manifestation determination or any decision regarding placement under Rule 3301-51-05 (K), the district will follow all applicable procedures found in Rule 3301-51-05(K)(8)-(11) of the *Operating Standards*.

**Protections for Children Not Yet Eligible for Special Education and Related Services [Rule 3301-51-05(K)(12)]**

- A. A child who has not been determined eligible for special education and related services and has engaged in behavior that violated any rule or code of conduct may assert protections under Rule 3301-51-05(K) of the *Operating Standards*, if in accordance with Rule 3301-51-05(K)(12)(b) of the *Operating Standards* the district had knowledge that the child was a child with a disability prior to the behavior that precipitated the disciplinary action.
- B. A school district would not be deemed to have knowledge in accordance with Rule 3301-51-05(K)(12)(c) of the *Operating Standards*, if the school district conducted an evaluation and determined that the child did not have a disability or a determination was made that an evaluation was not necessary, and provided written notice to the child's parents of its determination.
- C. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner and in accordance with the requirements set forth in Rule 3301-51-05(K)(12)(e)(i) and (ii).
- D. If a school district does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subject to the same disciplinary measures as those applied to children without disabilities who engaged in comparable behaviors.

**Referral to and Action by Law Enforcement and Judicial Authorities [Rule 3301-51-05(K)(13)]**

- A. The school district may report a crime committed by a child with a disability.
- B. The school district shall transmit the special education and disciplinary records for consideration by appropriate authorities as permitted by FERPA.

## EVALUATION 3301-51-06

### Relevant Definitions:

- Child with a disability [Rule 3301-51-01(F)]
- Differentiated referral [Rule 3301-51-01(N)]
- Documented deficit for preschool eligibility [Rule 3301-51-01(O)]
- Evaluation [Rule 3301-51-01(Q)]
- Preschool child with a disability [Rule 3301-51-01(GG)]
- Referral [Rule 3301-51-01(II)]

### Required Form(s):

- Referral for Evaluation
- Prior Written Notice to Parents
- Parent Consent for Evaluation
- Evaluation Team Report

### General [Rule 3301-51-06(A)]

- A. The school district must develop, provide, and document interventions to resolve concerns for a child prior to conducting a full and individual evaluation in accordance with Rule 3301-35-06(A) of the Administrative Code.
- B. If a disability is suspected, the school district must provide the parent with prior written notice indicating their intent to conduct an evaluation; provide parents notice of procedural safeguards; and must obtain a signed parent permission prior to conducting an evaluation.
- C. The evaluation must be completed within 90 calendar days of receiving written parental consent for the evaluation.
- D. If a disability is not suspected, the district is not required to conduct an evaluation. The parent must be provided prior written notice of this decision and a copy of the Procedural Safeguards Notice.

### Initial Evaluation [Rule 3301-51-06(B)]

- A. The school district will ensure that a full and individual evaluation is conducted before special education or related services are provided to a child with a disability.
- B. The school district shall develop a process to designate an evaluation team and team chairperson to conduct evaluations when a child is suspected of having a disability. Additional team members will be designated when a child is suspected of having a specific learning disability in accordance with Rule 3301-51-06(H) of the *Operating Standards*.

### Evaluation Procedures [Rule 3301-51-06(C)]

- A. The evaluation team, including the parents, shall conduct evaluations that are in accordance with requirements outlined in Rule 3301-51-06(C)(1)(a)-(n) of the *Operating Standards*, to determine the eligibility of children who are school-age for special education and related services.

- A. Evaluation teams shall address the specific evaluation requirements identified in Rule 3301-51-06 (C)(1)(o) and (p) of the *Operating Standards*, when conducting evaluations of preschool children.
- B. Evaluations shall be individually planned, focus on all areas relating to the suspected disability, and will include any additional areas needed to document all of the child's special education and related services needs.

**Determination of Needed Evaluation Data [Rule 3301-51-06(D)]**

- A. For an initial evaluation, the evaluation team shall develop an evaluation plan addressing the requirements of Rule 3301-51-06 (D)(1)(a) and (b) of the *Operating Standards*. As part of any reevaluation, the IEP team and any other qualified professionals, as appropriate, shall develop the evaluation plan.
- B. In developing the plan for the evaluation, the evaluation team begins with a review of existing evaluation data, including evaluations and information provided by the parents of the child; current classroom-based assessments and observations; data about the child's progress in the general curriculum, or for the preschool-age child, data pertaining to the child's growth and development; observations by teachers and related services providers; and data from previous interventions; relevant trend data beyond the last 12 months; and review of current and previous IEPs.

Based on that review, and input from the child's parents, the team identifies what additional data, if any, are needed to address:

- 1) Whether the child has or continues to have a disability as defined in Rule 3301-51-01(F)(3) of the *Operating Standards*;
  - 2) The child's present levels of performance and educational needs;
  - 3) Whether the child needs or continues to need special education and related services; and
  - 4) In the case of a reevaluation, whether any additions or modifications to the special education and related services are needed to enable the child the meet measurable annual IEP goals, participate in the general curriculum as appropriate, or in the case of a preschool child, participate in developmentally appropriate environments and learning activities.
- C. In planning evaluation activities, evaluation teams must also address additional procedures for evaluating children with specific learning disabilities, multiple disabilities, and hearing impairments in accordance with Rule 3301-51-06(H)-(J) of the *Operating Standards*.
  - D. In the case of a reevaluation, if the team determines that no additional data are needed to determine if the child continues to be a child with a disability, the school district shall notify the parent as specified in Rule 3301-51-06(D)(3)(a)-(c) of the *Operating Standards*, of that determination and the reasons for it and the parents' right to request an assessment to determine whether for the purposes of services, the child continues to be a child with a disability. If requested, the district shall conduct the assessment(s) in accordance with Rule 3301-51-06(D)(3)(b) of the *Operating Standards*.

### **Determination of Eligibility [Rule 3301-51-06(E)]**

- A. Members of the evaluation team, including the parents of the child, must determine whether the child is, or continues to be, a child with a disability.
- B. In making this determination, the evaluation team must consider whether the child meets the definition of one or more of the disability categories in Rule 3301-51-01(F)(3)(a)-(m) of the *Operating Standards*. In accordance with Rule 3301-51-06(H)-(J) of the *Operating Standards*, additional criteria must be met in order for the team to determine eligibility for specific learning disabilities, multiple disabilities and hearing impairment. The evaluation team must further determine that the disability is not due to a lack of instruction in reading or math or limited English proficiency; or in the case of a preschool child, the disability is not solely the result of environmental, cultural or economic disadvantage and that there is an adverse affect upon normal development and functioning.
- C. Eligibility for a preschool child shall be determined when a deficit is documented in one of the areas described in Rule 3301-51-06(E)(3)(a) of the *Operating Standards*. Documented deficits as defined in Rule 3301-51-01(O)(1)(a) and (b) of the *Operating Standards*, shall be based on data obtained through four assessment methodologies: norm referenced assessment; criterion referenced assessment, observation, and structured interview data in accordance with Rule 3301-51-06(F)(3)(a)-(d) of the *Operating Standards*.

### **Procedures for Determining Eligibility [Rule 3301-51-06(F)]**

- A. When interpreting the evaluation data to determine if a child is, or continues to be, a child with a disability, and the educational needs of the child, the evaluation team shall follow procedures specified in Rule 3301-51-06 (F)(1)(a) and (b) of the *Operating Standards*.
- B. A written evaluation team report (ETR) shall contain the information required by Rule 3301-51-06(F)(4) of the *Operating Standards*, including:
  - 1) Summary of information obtained during the evaluation process;
  - 2) Documentation of eligibility confirming that the characteristics of the child meet the definition of the disability and any additional criteria as required when determining eligibility for children with learning disabilities, multiple disabilities and hearing impairments; and
  - 3) The basis for determining eligibility, including a statement that the disability is not due to lack of instruction in reading or math or due to limited proficiency with the English language; or in the case of a preschool child, that the disability is not solely the result of environmental, cultural, or economic factors and that there is an adverse affect upon normal development and functioning;
- C. The team report shall include the names, titles and signatures of each team member, including the parent and an indication of whether or not they are in agreement with the eligibility determination. Any team member who is not in agreement shall submit a statement of disagreement.
- D. Parents shall receive a copy of the evaluation team report within 30 days of the date of eligibility determination or prior to the IEP meeting.



- E. In the case of an initial evaluation, if it is determined that the child has a disability, an IEP must be developed within 30 days of the date of this determination and within 90 days of receiving parental consent for evaluation, or within one hundred and twenty days of referral, whichever comes first.

#### **Reevaluation [Rule 3301-51-06(G)]**

- A. The school district must conduct a reevaluation once every three years, or in a timely manner when conditions warrant in accordance with Rule 3301-51-06(G) of the *Operating Standards*.
- B. The following conditions warrant a reevaluation:
  - 1) Transition of a child from preschool to school-age services;
  - 2) Change in disability category
  - 3) Before determining the child no longer is a child with a disability;
  - 4) Related service are being considered for addition to the IEP; and
  - 5) Parent or teacher request.
- C. A reevaluation is not required before termination of student's eligibility due to graduation or age.
- D. As part of any reevaluation the IEP team and other qualified professionals, as necessary, shall develop an evaluation plan addressing the requirements of Rule 3301-51-06 (D)(1)(a) of the *Operating Standards*.
- E. For a reevaluation, the IEP team and other qualified professionals, as appropriate, shall review existing data, including evaluations and information provided by the parents of the child; current classroom-based assessments and observations; data about the child's progress in the general curriculum, or for the preschool-aged child, data pertaining to the child's growth and development; observations by teachers and related service providers; relevant trend data beyond the last 12 months; and review of current and previous IEPs.

Based on that review, and input from the child's parents, the team identifies what additional data, if any, are needed to address:

- 1) Whether the child continues to have a disability as defined in Rule 3301-51-01(F)(3) in the *Operating Standards*;
  - 2) The child's present levels of performance and educational needs;
  - 3) Whether the child 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 child the meet measurable annual IEP goals, participate in the general curriculum as appropriate, or in the case of a preschool child, participate in developmentally appropriate environments and learning activities.
- F. If the IEP team determines that no additional data are needed to address these factors, the school district shall notify the parent as specified in accordance with Rule 3301-51-06 (D)(3)(a)-(c) of the *Operating Standards*, of that determination and the reasons for it. The notice to parents shall explain that the parent has a right to request an assessment to determine whether, for the purposes of services, the child continues to be a child with a disability. If a request is received, the district will conduct the assessment(s) in accordance with Rule 3301-51-06(D)(3)(b) in the *Operating Standards*.

- G. The team will complete a written evaluation team report (ETR) to document the reevaluation. The ETR shall contain the information required by Rule 3301-51-06(F)(4) in the *Operating Standards*.

## INDIVIDUALIZED EDUCATION PROGRAM (IEP) 3301-51-07

### Relevant Definition:

- School district of residence [Rule 3301-51-01(LL)]
- Parent 3301-51-01(BB)

### Required Form(s):

- Individualized Education Program (IEP)
- Parent Invitation

### General [Rule 3301-51-07(C)]

The school district of residence is responsible for ensuring that an individualized education program (IEP) is developed and implemented for each child with a disability regardless of where the child is educated.

### IEP in Effect [Rule 3301-51-07(D)]

- A. The school district of residence shall develop an IEP for each eligible child by his or her third birthday, and prior to the beginning of each subsequent school year, in accordance with Rule 3301-51-02(A)(1) of the *Operating Standards*.
- B. The school district shall ensure that an IEP is in effect before special education and related services are provided to an eligible child. The IEP shall be implemented as soon as possible following the IEP meeting.
- C. The school district shall develop an initial IEP within:
  - 1) 30 calendar days of the date it was determined that the child needs special education and related services;
  - 2) 90 calendar days of the date parental consent for evaluation was received; or
  - 3) 120 calendar days of the date of the referral for an evaluation, whichever comes first.
- D. The school district shall appoint staff to represent the district at transition conferences, held by early intervention providers for the purpose of planning for the transition of children from early intervention services to preschool special education services.
- E. The school district shall ensure that a current IEP is accessible to each teacher and service provider responsible for its implementation. Each teacher, including the regular education teacher, shall be informed of his/her responsibilities related to implementing the IEP, including the specific accommodations, modifications, and supports that must be provided.

### IEP Team [Rule 3301-51-07(E)]

- A. The school district shall ensure that each child's IEP team includes:
  - 1) Parent(s) of the child;
  - 2) At least one regular education teacher;
  - 3) At least one special education teacher/intervention specialist or service provider (e.g. speech language pathologist);
  - 4) District representative;
  - 5) An individual who can interpret the instructional implications of evaluation results;

- 6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child; and
  - 7) The child, when appropriate.
- B. The school district shall invite the child to the IEP meeting under conditions set forth in Rule 3301-51-07(E)(2) and (3) of the *Operating Standards*.
  - C. The school district shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain participation of the other agency in the planning of any transition services.

#### **Parent Participation in Meetings [Rule 3301-51-07(F)]**

- A. The school district shall take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. This shall be accomplished by notifying parents of an IEP meeting early enough to ensure that they will have an opportunity to attend and that the meeting is held at a mutually agreed upon time and place.
- B. The school district shall ensure that the invitation to parents requesting their participation in IEP meetings contains the information as delineated in Rule 3301-51-07(F)(2) of the *Operating Standards*.
- C. If the parent cannot attend the IEP meeting, the school district will use other methods such as conference calls or meetings held off site to facilitate parent participation.
- D. The school district must document attempts to involve parents such as telephone calls, correspondence or personal contact to arrange their participation in IEP meetings at a mutually agreed upon time and location in accordance with Rule 3301-51-07(F)(4) of the *Operating Standards*.
- E. The school district shall take whatever action is necessary to ensure that parents understand the proceedings at the IEP meeting including arranging for an interpreter or translator.

#### **IEP Sequential Process [Rule 3301-51-07(G)]**

- A. The school district shall ensure that meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability are initiated and conducted by the IEP team in accordance with 3301-51-07(G) of the *Operating Standards*.
- B. The IEP team shall develop the IEP for a child by following the six sequential steps in accordance with 3301-51-08(G)(1) of the *Operating Standards*.
  - 1) Discussing the child's future with parent and child and documenting their planning information on the IEP;
  - 2) Discussing and documenting the child's present levels of performance;
  - 3) Identifying needs that require specially-designed instruction;
  - 4) Identifying measurable goals, objectives and assessment procedures;
  - 5) Identifying needed services; and
  - 6) Determining least restrictive environment.

- C. The IEP team shall consider the following special factors when developing an IEP for a child with a disability and include appropriate supports and services that address the child's needs on the IEP in accordance with 3301-51-07(G)(2) of the *Operating Standards*:
  - 1) Behavior;
  - 2) Limited English Proficiency;
  - 3) Visual impairments;
  - 4) Communication; and
  - 5) Assistive technology devices and services.
- D. The IEP team shall consider the following and address them as appropriate in the IEP in accordance with 3301-51-07(G)(3) of *Operating Standards*:
  - 1) Regular or special physical education services;
  - 2) Extended school year services;
  - 3) Transition (school to post-school); and
  - 4) Testing on State and district wide assessments.
- E. The school district will inform the child's parents of their child's progress toward their annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year at least as often as parents of nondisabled children are informed.

#### **Parent Consent and Copies of the IEP [Rule 3301-51-07(H)]**

- A. Written parental consent shall be obtained before initially providing special education and related services in accordance with Rule 3301-51-05(E)(1)(b) of the *Operating Standards*.
- B. Parents will be provided a copy of their child's IEP at no cost, within 30 calendar days after the IEP meeting.

#### **Periodic Review [Rule 3301-51-07(I)]**

- A. An IEP must be developed, reviewed and revised by the IEP team at least annually. An IEP may be reviewed or revised more often if necessary by the IEP team.
- B. The IEP team may revise the IEP, as appropriate, to address:
  - 1) Any lack of expected progress toward achieving annual goals and in the general curriculum;
  - 2) The results of any reevaluation;
  - 3) Information about the child provided to or by the parents;
  - 4) The child's anticipated needs; or
  - 5) Other matters.
- C. The IEP team shall follow the IEP sequential process and review of special factors and other considerations in accordance with Rule 3301-51-07(G) of *Operating Standards*, when developing a new IEP during a periodic review.

#### **Children in Other Districts or Agencies [Rule 3301-51-07(J)]**

- A. The school district of residence is responsible for ensuring that an IEP is developed and implemented for each child with a disability.
- B. The school district of residence must follow the same procedural safeguards it does for all children with disabilities.

- C. All school districts involved in the education of the child must have on file copies of the child's current MFE and IEP

**Children in Private Schools [Rule 3301-51-07(K)]**

When the school district of residence places children with disabilities in a private school or facility it will ensure that special education and related services are provided in accordance with an IEP and at no cost to the parent and will follow procedures outlined in 3301-51-07(K)(1)-(3) of the *Operating Standards*.

**IEP Accountability [Rule 3301-51-07(L)]**

Each school district and other educational agency shall provide special education and related services in accordance with the child's IEP and make a good faith effort to assist the child achieve the goals and objectives listed in the IEP.

## DUE PROCESS PROCEDURES 3301-51-08

### Relevant Definition:

- None

### Required Form(s):

Request for an Impartial Due Process Hearing

### General [Rule 3301-51-08(A)]

- A. The school district shall afford parents the opportunity to resolve disputes regarding identification, evaluation, and educational placement or provision of a free appropriate public education (FAPE).
- B. While dispute resolution is recommended, the school district recognizes that it cannot be used to delay or deny an impartial due process hearing that has been requested in writing. Dispute resolution may lead to resolution of differences without going to an impartial due process hearing. Dispute resolution includes the following in accordance with Rule 3301-51-01(A) of the *Operating Standards*:
  - 1) Case conferences;
  - 2) Administrative reviews; and
  - 3) Mediation.

### Impartial Due Process Hearing [Rule 3301-51-08(B)]

The school district of residence, the parent, the school district, the county board of MR/DD, or other educational agencies providing special education or related services, may file a request for a due process hearing when a school district proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child with a disability or the provision of FAPE to the child in accordance with 3301-51-08(B)(1)(a) and (b) of the *Operating Standards*.

### Initiation of Impartial Due Process Hearing [Rule 3301-51-08(C)]

- A. When an impartial due process hearing is initiated:
  - 1) The hearing must be requested in writing to the superintendent of the school district of residence. If the parent requests the hearing, the notice shall be provided by the parent of the child with a disability or the attorney representing the child and must remain confidential.
  - 2) The request for a hearing shall include the information specified in Rule 3301-51-08 (C)(1)(a) and (b) of the *Operating Standards*.
  - 3) If someone other than the child's parent has requested a hearing, the parent shall be informed in writing of the request. The parent shall be invited to participate in the proceedings and shall be provided copies of all communication between the parties.
- B. If a hearing is initiated, or if the parent requests the information, the school district shall inform the parent of any free or low-cost legal services available in the area.

- C. Mediation will be offered to all parties involved whenever the Office for Exceptional Children, Ohio Department of Education receives a request for a due process hearing.
- D. When the superintendent of a school district receives a request for a due process hearing, the superintendent shall:
  - 1) Immediately time stamp the request and send a copy of the request to the Ohio Department of Education, Office for Exceptional Children.
  - 2) Inform the parent, in writing, of any free or low-cost legal and other relevant services available in the area; and
  - 3) Provide the parent with a copy of the procedural safeguards notice, as required by Rule 3301-51-05(D)(1) of the *Operating Standards*, as well as additional sources for the parent to contact to obtain assistance in understanding the provisions of their procedural safeguards.

#### **Selection of Impartial Hearing Officer or State Level Review Officer [Rule 3301-51-08(D)]**

- A. When notified that an impartial due process hearing is requested, the Ohio Department of Education, Office for Exceptional Children will send a list of three impartial hearing officers (IHO), and a statement of the qualifications of each IHO by certified mail to both the parent and the district.
- B. The parent and district have the opportunity to agree to an IHO. If an agreement is reached, the school district will immediately notify the Office for Exceptional Children of the selection of the IHO.
- C. If the parties involved cannot agree on an IHO, or if notice of the selection of an IHO is not received within ten calendar days of the certified mailing, the Office for Exceptional Children will appoint the IHO from the list of three hearing officers.

#### **Qualifications of Impartial Hearing Officer or State Level Review Officer [Rule 3301-51-08(E)]**

Impartial hearing officers or state level review officers shall meet the qualifications specified in Rule 3301-51-08(E)(1)-(4) of the *Operating Standards*.

#### **Responsibilities of Hearing Officer [Rule 3301-51-08 (F)]**

The IHO will inform parties in a hearing of their rights as outlined in Rule 3301-51-08(F)(1) and (2) of the *Operating Standards*.

#### **Timelines and Convenience of Hearings [Rule 3301-51-08(G)]**

An IHO is responsible for assuring compliance with required timelines as outlined in Rule 3301-51-08(G)(1)-(4) of the *Operating Standards*.

#### **State Level Review/Appeals to the Court [Rule 3301-51-08(H)]**

- A. The decision of the hearing officer is final, except any party aggrieved by the findings and decision of the hearing officer may appeal the decision.
- B. The appeal must be submitted, in writing, to the State Board of Education within forty-five days of notification of the decision.



### **Appeals to the Court [Rule 3301-51-08(I)]**

- A. Any party aggrieved by the final decision of the state level review officer may appeal the final decision, in writing, within forty-five days of notification of the decision to:
  - 1) The common pleas court of the county of the child's school district of residence as provided by section 3323.05 of the Revised Code; or
  - 2) The federal district court of competent jurisdiction.
- B. The court shall:
  - 1) Receive the records of the administrative proceedings;
  - 2) Hear additional evidence at the request of a party; and
  - 3) Basing its decision on the preponderance of the evidence shall grant the relief that the court determines to be appropriate.
- C. In any action or proceedings brought under this rule, the court, in its discretion, may award reasonable attorneys' fees as part of the costs for the parent of a child with a disability who is the prevailing party.
- D. Funds received under the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under this rule.

### **Child's Status During Proceedings [Rule 3301-51-08(J)]**

With the exceptions identified in Rule 3301-51-08(J)(1)-(4) of the *Operating Standards*, the child involved in the complaint remains in his or her current educational placement during the due process hearing or subsequent appeals.

## DELIVERY OF SERVICES 3301-51-09

### Relevant Definition:

- Caseload for one preschool special education teacher 3301-51-01(E)

### Required Form(s):

### Individualized Education Program (IEP)

### Least Restrictive Environment [Rule 3301-51-09(A)]

- A. The school district shall ensure that:
- 1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
  - 2) Special classes, separate schooling or other removal of child with a disability from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- B. The IEP team will determine where special education and related services are to be delivered. The school district shall ensure that these decisions are made in accordance with Rule 3301-51-09(A)(2)(a)-(d) of the *Operating Standards*; are determined at least annually; are based on the child's IEP; and are provided as close as possible to the child's home; unless the IEP of the child requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.
- C. The school district shall ensure that a continuum of alternative placements is available to meet the needs of a child with a disability for special education and related services in accordance with Rule 3301-51-09(A)(3) of the *Operating Standards*.
- D. The school district shall ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the school district, including art, music, industrial arts, consumer and homemaking education, and vocational education.
- E. The school district shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities in accordance with Rule 3301-51-09(A)(5)(a) and (b) of the *Operating Standards*.
- F. The school district will ensure that the length of school days and the school year for children with disabilities are consistent with Rule 3301-35-06 of the Administrative Code and consistent with that provided nondisabled children unless otherwise indicated on the child's IEP.
- G. The school district will ensure that special education and related services provided to children with disabilities are implemented during the first full week of school and are provided during the regular school day, unless otherwise indicated on the IEP in accordance with Rule 3301-51-09(A)(6)(a) and (b) of the *Operating Standards*.

### **Preschool Services [Rule 3301-51-09(B)]**

- A. The school district will ensure that the LRE requirements in Rule 3301-51-09(A) of *Operating Standards* are followed for preschool children with disabilities and will address these delivery of services by:
  - 1) Providing center-based programs for preschool children with disabilities in licensed facilities in compliance with Rule 3301-37-05 of the Administrative Code and that are in accordance with 3301-51-09(B)(1)(a)-(c) of the *Operating Standards*.
  - 2) Offering a continuum of service delivery options for preschool special education that, at a minimum, includes the choices in Rule 3301-51-09(B)(2)(a) and (b) of the *Operating Standards*.
  - 3) Providing a preschool special education program that is designed to provide a developmentally appropriate curriculum, as required by Rule 3301-51-09(B)(3) of the *Operating Standards*.
- B. The school district may serve children with disabilities who are five years old on or before the date established by State statute for kindergarten eligibility in a school-age special education program provided they are identified as eligible under school-age criteria; or in a preschool special education program provided they are identified as eligible under preschool criteria, as provided for in Rule 3301-51-09(B)(4)(a) and (b) of the *Operating Standards*.
- C. The school district will conduct activities that address the transition of preschool children with disabilities from early intervention services to preschool special education services. Transition activities such as the designation of staff to facilitate the transition process or provision of information to families will be provided in accordance with Rule 3301-51-09(B)(5)(a) and (b) of the *Operating Standards*.

### **Strategic Planning for Delivery of Services to Preschool/School-Age Children [Rule 3301-51-09(C)]**

- A. In developing the district's strategic plan or continuous improvement plan (CIP), the school district will involve special education service providers as well as key stakeholders to review its strategic plan or CIP and update it regarding planning for the delivery of services to children with disabilities in accordance with Rule 3301-51-09(C)(1)(2) of *Operating Standards*.
- B. The school district will submit program evaluation information regarding its preschool special education programs as requested by the Ohio Department of Education.

### **Role of Preschool and School-Age Service Providers [Rule 3301-51-09(D)]**

- A. The school district will assign early childhood and school-age intervention specialists and related service providers to meet the unique educational needs of each child with a disability assigned to them.
- B. Service providers for school-age children with disabilities may provide direct or indirect services to students with disabilities in one or any combination of instructional groupings, including; large-group, small-group, individual instruction, and/or parent and teacher training and consultation.

- C. The school district shall ensure that early childhood and school-age intervention specialists and/or related services specialists will provide services as identified in Rule 3301-51-09 (D)(3)(a)-(e) of the *Operating Standards*.
- D. The school district shall ensure that paraprofessionals and educational aides and related services assistants are supervised.

**Qualifications of Service Providers [Rule 3301-51-09(E) and (F)]**

- A. The school district shall employ personnel to meet the needs of children with disabilities that have appropriate certification or licensure as defined by Chapter 3301-24 of the Administrative Code.
- B. The school district shall employ personnel to meet the needs of preschool children with disabilities in accordance with Rule 3301-51-09(F)(1)-(3) of the *Operating Standards*.
- C. The school district will ensure that paraprofessionals employed by the district to provide services to children with disabilities shall hold an educational aide permit or associate license in accordance with Rule 3301-24-05(G) or (I) of the Administrative Code.

**Service Providers Ratios for Delivery of Services [Rule 3301-51-09(G)]**

- A. The school district shall determine a ratio for delivery of service for individual service providers by considering the following issues in accordance with Rule 3301-51-09(G)(1) of the *Operating Standards*:
  - 1) Scheduling and time demands of the service provider, including but not limited to, the following: Screening; assessment; consultation; counseling; training; related duties in the school setting; intervention design; and educational interventions;
  - 2) The severity of each eligible child's need, and the level and frequency of services necessary for the child to attain IEP goals and objectives;
  - 3) Time needed for planning in accordance with Rule 3301-35-05(A)(9) of the Administrative Code; and
  - 4) Additional time for diagnostic testing; classroom observation; coordination of the program; conferencing with parent(s), staff and agencies concerning individual children; staff development activities; follow-up activities, and demands of an itinerant schedule including the number of buildings, the distance between buildings, and travel.
- B. The school district shall consider the issues listed above when determining the service provider ratios for its preschool special education service providers. Ratios for preschool service providers will not exceed those identified in Rule 3301-51-09(G)(2)(a)-(d) of the *Operating Standards*.
- C. The school district shall consider the issues listed above when determining the service ratios for its service providers for school-age children with disabilities. The service ratios for school-age special education providers shall not exceed those identified in Rule 3301-51-09 (G)(3)(a)-(g) of the *Operating Standards*.
- D. The school district shall consider the issues listed above when determining the service provider ratios for its related, transition, and supervisory service providers for preschool and school-age children with disabilities. The ratios for related, transition and supervisory services will not exceed those identified in Rule 3301-051-09(G)(4)-(6) of the *Operating Standards*.

**Housing, Facilities, Materials, and Equipment and Supplies for Preschool and School-Age Programs [Rule 3301-51-09(H)]**

The school district shall ensure that the service areas for service providers and children with disabilities comply with the requirements set forth in Rule 3301-51-09(H).

**Waivers [Rule 3301-51-09 (I)]**

School districts, county boards of MR/DD, and other educational agencies may be granted a waiver under circumstances set forth in Rule 3301-51-09(I).