

**3301-51-01 Applicability of requirements and definitions.**

**3301-51-01(A)(3)(ii):**

(3) School district other than school district of residence

- (a) Each school district is responsible for serving a child with a disability who is living in its school district, even though the school district is not the child's school district of residence. The child's school district of residence retains responsibility for making FAPE available to the child.
- (b) "Serving a child with a disability" means educating the child which includes making special education and related services available to the child.
  - (i) The responsibility to serve a nonresident child with a disability living in the school district includes, but is not limited to, a child with a disability placed in a juvenile justice facility, institution, hospital, agency, department, home as defined in section 3313.64 of the Revised Code, or other facility or entity located in the school district.
  - (ii) The responsibility to serve a nonresident child with a disability does not apply to the school district in which the child is living if the child is already being served by another school district, a nonpublic school, county board of mental retardation and developmental disabilities (county board of MR/DD), other educational agency, a state or local agency or institution, or other provider, including an open enrollment school district, the Ohio department of youth services, ~~or a~~ provider for the "Autism Scholarship Program" established by section 3310.41 of the Revised Code, or a provider of the "Jon Peterson Special Needs Scholarship Program" established by section 3310.52 of the Revised Code. However, if the child is placed in a nonpublic school in the school district, the school district must include the child in the population whose needs are addressed consistent with the requirements of rule 3301-51-08 of the Administrative Code.

**3301-51-01(B)(21)**

(21) “Initial Evaluation team” means the parents and a group of IEP team and other qualified professionals.

(22) “Evaluation team for children potentially identified with specific learning disabilities” means the parents and a group of qualified professionals, which must include:

(a) The child’s regular teacher; or

(b) If the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child’ age; or

(c) For a child of less than school-age, an individual qualified by the Ohio Department of Education to teach a child of the child’s age; and

(d) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial teacher.

(23) “Re-evaluation team” means the IEP team and other qualified professionals.

**3301-01-51(B)(63)**

(63) “Transition services” :

(a) Means a coordinated set of activities for a child with a disability that:

(i) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes:

(a) Instruction;

(b) Related services;

(c) Community experiences;

- (d) The development of competitive employment in which workers are integrated regardless of disability and other post-school adult living objectives; and
  - (e) If assessment data support a need, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (iii) Shall be provided by qualified transition coordinators individuals who have the competencies, experiences, and training required to meet the individual student's transition services needs, ~~and may include job training coordinators, vocational special education coordinators, career assessment specialists, work-study coordinators or other qualified individuals.~~
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

**3301-51-02 Free appropriate public education.**

No substantive changes were made to this rule.

**3301-51-03 Child find.**

No substantive changes were made to this rule.

**3301-51-04 Confidentiality.**

No substantive changes were made to this rule.

**3301-51-05 Procedural safeguards.**

**3301-51-05(H)(4)(c)**

**(4) Additional notice requirements**

- (a) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability within thirty days of the date of referral.
- (b) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability prior to a change of placement that is a result of a disciplinary action.
- ~~(c) The IEP shall serve as written notice unless the parent disagrees with the IEP. If the parent disagrees, written notice shall be provided prior to the implementation of the IEP.~~

**3301-51-05(K)(9)(a)(iii)**

**(9) Resolution process**

**(a) Resolution meeting**

(i) Within fifteen days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under paragraph (K)(10) of this rule, the school district of residence must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

*(a)* Includes a representative of the school district of residence who has decision-making authority on behalf of that district; and

*(b)* May not include an attorney of the school district of residence unless the parent is accompanied by an attorney.

(ii) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district of residence has the opportunity to resolve the dispute that is the basis for the due process complaint.

~~(iii) Discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.~~

(iviii) The meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule need not be held if:

(a) The parent and the school district of residence agree in writing to waive the meeting; or

(b) The parent and the school district of residence agree to use the mediation process described in paragraph (K)(3) of this rule.

(iv) The parent and the school district of residence determine the relevant members of the IEP team to attend the meeting.

**3301-51-05(20)(f)**

(20) Authority of school personnel

(a) Case-by-case determination

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 rule, is appropriate for a child with a disability who violates a code of student conduct.

(b) General

(i) School personnel under this rule may remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children 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 under paragraph (K)(26) of this rule).

(ii) After a child with a disability has been removed from the child's current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under paragraph (K)(20)(d) of this rule.

(c) Additional authority

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 child's disability pursuant to paragraph (K)(20)(e) of this rule, school personnel may apply the relevant

disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (K)(20)(d) of this rule.

(d) Services

(i) A child with a disability who is removed from the child's current placement pursuant to paragraph (K)(20)(c) or (K)(20)(g) of this rule must:

(a) Continue to receive educational services, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(ii) The services required by paragraphs (K)(20)(d)(i), (K)(20)(d)(iii), (K)(20)(d)(iv), and (K)(20)(d)(v) of this rule may be provided in an interim alternative educational setting.

(iii) A school district is only required to provide services during periods of removal to a child with a disability who has been removed from the child's current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(iv) After a child with a disability has been removed from the child'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 this rule, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(v) If the removal is a change of placement under this rule, the child's IEP team determines appropriate services under paragraph (K)(20)(d)(i) of this rule.

(e) Manifestation determination

(i) Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(ii) The conduct must be determined to be a manifestation of the child's disability if the school district, the parent, and relevant members of the child's IEP team determine that a condition in either paragraph (K)(20)(e)(i)(a) or (K)(20)(e)(i)(b) of this rule was met.

(iii) If the school district, the parent, and relevant members of the child's IEP team determine the condition described in paragraph (K)(20)(e)(i)(b) of this rule was met, the school district must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation

If the school district, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

(i) Either:

(a) ~~Start to~~ Conduct a functional behavioral assessment ~~within ten days of the manifestation determination and complete the assessment as soon as practicable~~, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(b) If a behavioral intervention plan already has been developed, ~~within ten days of the manifestation determination~~, review the behavioral intervention plan and the implementation of the plan, and modify it, as necessary, to address the behavior ~~subject to disciplinary action~~; and

(ii) Except as provided in paragraph (K)(20)(g) of this rule, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances

School personnel may remove a child to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

(i) 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 Ohio department of education or a school district;

(ii) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Ohio department of education or a school district; or

(iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ohio department of education or a school district.

(h) Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (I) of this rule.

(i) The following terms are defined as they are used in this rule:

(a) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act as amended and specified in the Anabolic Steroids Control Act of 1990, November 1990, 21 U.S.C. 812(c).

(b) "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.



(c) "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18, United States Code.

(d) "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code.

### **3301-51-06 Evaluations.**

#### **3301-51-06(D)(1)(c)**

#### **(D) Reevaluations**

##### **(1) General**

A school district of residence must ensure that a reevaluation of each child with a disability is conducted in accordance with paragraphs (E) to (J) of this rule:

- (a) If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (b) If the child's parent or teacher requests a reevaluation; or
- (c) When a child, with a developmental delay, transitions from preschool to school-age services; or
- (d) In order to make a change in disability category.

##### **(2) Limitation**

A reevaluation conducted under paragraph (D)(1) of this rule:

- (a) May occur not more than once a year, unless the parent and the school district agree otherwise; and
- (b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

**3301-51-06(F)(1)**

**(F) Additional requirements for evaluations and reevaluations**

**(1) Review of existing evaluation data**

As part of an initial evaluation, ~~if appropriate~~, and as part of any reevaluation under this rule, the evaluation team shall develop an evaluation plan that will provide for the following and be summarized in an evaluation team report:

- (a) Review existing evaluation data on the child, including:**
  - (i) Evaluations and information provided by the parents of the child;**
  - (ii) Current classroom-based, local, or state assessments, and classroom-based observations;**
  - (iii) Observations by teachers and related services providers;**
  - (iv) 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;**
  - (v) Data from previous interventions, including:**
    - (a) Interventions required by rule 3301-35-06 of the Administrative Code; and**
    - (b) For the preschool child, data from early intervention, community or preschool program providers; and**
  - (vi) Any relevant trend data beyond the past twelve months, including the review of current and previous IEPs; and**
- (b) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:**
  - (i) Whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, and the educational needs of the child; or**
  - (ii) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;**
  - (iii) The present levels of academic achievement and related developmental needs of the child;**

- (iv) Whether the child needs special education and related services; or
- (v) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (vi) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

### **3301-51-06(G)**

#### **(G) Determination of eligibility**

##### **(1) General**

Upon completion of the administration of assessments and other evaluation measures:

- (a) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in rule 3301-51-01 of the Administrative Code, in accordance with paragraph (G)(2) of this rule and the educational needs of the child; and
- (b) The school district provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
  - (i) The written evaluation team report shall include:
    - (a) A summary of information obtained during the evaluation process; and
    - (b) 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 with the team's determination of disability shall submit a statement of disagreement.
  - (ii) The school district must provide a copy of the evaluation team report and the documentation of determination of eligibility or continued eligibility to the parents prior to the next IEP meeting and in no case later than fourteen days from the date of eligibility determination.

(2) Special rule for eligibility determination

A child must not be determined to be a child with a disability under this rule:

- (a) If the determinant factor for that determination is:
  - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 1208(3) of the Elementary and Secondary Education Act of 1965, as amended and specified in the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA);
  - (ii) Lack of appropriate instruction in math; or
  - (iii) Limited English proficiency; and
- (b) If the child does not otherwise meet the eligibility criteria under paragraph (B)(10) of rule 3301-51-01 of the Administrative Code.

(3) Procedures for determining eligibility and educational need

- (a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability as defined in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code, and the educational needs of the child, each school district must:
  - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, state and districtwide assessments, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
  - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- (b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with rule 3301-51-07 of the Administrative Code.

(4) Scholarship Notification

- (a) Each time a district completes an evaluation for a child with a disability or undertakes the development, review or revision of the child's IEP, the district shall notify the child's parent, by letter or electronic means, about both the Autism Scholarship Program, under sections 3310.41 of the Revised Code, and the Jon Peterson Special Needs Scholarship Program,

under sections 3310.51 to 3310.64 of the Revised Code in accordance with Revised Code section 3323.052(c).

(b) The notice shall include the following:

- (i) Information that the child may be eligible for a scholarship under either the Autism Scholarship Program or the Jon Peterson Special Needs Scholarship Program that implements the child's IEP and that is operated by an alternative public provider or by a registered private provider; and
- (ii) The telephone number of the office of the department responsible for administering the scholarship programs and the specific location of scholarship information on the department's website.

**3301-51-06(J)**

(J) Additional procedures for identifying children with deafness or hearing impairment

A group of qualified professionals, which shall include a licensed audiologist, and the parents of the child may determine the child has deafness or a hearing impairment if the child exhibits:

- (1) An impairment in hearing, whether permanent or fluctuating, that adversely affects educational performance. An average pure tone hearing loss of fifty decibels or greater, according to the "American Speech-Language-Hearing Association (ASHA) Guidelines for the Audiologic Assessment of Children From Birth to Five Years of Age" (2004) for children from birth to five years of age or according to the "American Speech-Language-Hearing Association (ASHA) Guidelines for Manual Pure-Tone Threshold Audiometry" (2005) for children six through twenty-one years of age, for the frequencies five hundred, one thousand, and two thousand hertz in the better ear; [The guidelines referenced in paragraph (J)(1) of this rule are available at [www.asha.org](http://www.asha.org).]
- (2) The determination of whether the child has a hearing impairment shall be based on the individual child and cannot be based on audiogram alone. An average pure tone hearing loss of twenty-five decibels or greater (ASHA) for the frequencies five hundred, one thousand, and two thousand hertz in the better ear, which has an adverse effect upon the child's educational performance related to documented evidence of:
  - ~~(a) A more severe hearing loss during the developmental years than is currently measured;~~
  - ~~(b) A history of chronic medical problems that have resulted in fluctuating hearing, presently or in the past; or~~

~~(e) A delay in diagnosis, provision of amplification, or initiation of special programming.~~

~~(3) A hearing loss in excess of twenty-five decibels (ASHA) for the frequencies one thousand hertz through eight thousand hertz in the better ear, resulting in such poor auditory discrimination that it has an adverse effect upon the child's educational performance.~~

### **3301-51-07 Individualized education program (IEP).**

#### **3301-51-07(H)**

(H) Definition of individualized education program

(1) General

As used in this rule, the term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with paragraphs (H) to (L) of this rule and that must include:

(a) A statement that discusses the child's future

The IEP team shall ensure that the family and child's preferences and interests are an essential part of the planning process. The IEP team will document planning information on the IEP;

(b) A statement of the child's present levels of academic achievement and functional performance, including:

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(c) **A statement of measurable annual goals, including academic and functional goals that contain the following six critical elements:**

(i) Who?

(ii) Will do what?

(iii) To what level or degree?

(iv) Under what conditions?

(v) In what length of time?

(vi) How will progress be measured?

(d) Benchmarks or short-term objectives designed to:

- (i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (ii) Meet each of the child's other educational needs that result from the child's disability;

(d) A description of:

- (i) How the child's progress toward meeting the annual goals described in paragraph (H)(1)(c) of this rule will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

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

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (H)(1)(b) of this rule, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

(f) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (H)(1)(e) of this rule;

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the IDEA;

- (h) If the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:
  - (i) The child cannot participate in the regular assessment; and
  - (ii) The particular alternate assessment selected is appropriate for the child; and
- (i) The projected date for the beginning of the services and modifications described in paragraph (H)(1)(e) of this rule and the anticipated frequency, location, and duration of those services and modifications.

(2) Transition services

Beginning not later than the first IEP to be in effect when the child turns fourteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

- (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, and, if assessment data support the need, independent living skills;
  - (b) Appropriate measureable post-secondary goals based on age-appropriate transition assessments related to employment in a competitive environment in which workers are integrated regardless of disabilities; and
  - (c) The transition services (including courses of study) needed to assist the child in reaching those goals.
- ~~(a) For each child with a disability, beginning at age fourteen (or younger, if determined appropriate by the IEP team), the IEP shall include a statement, updated annually, of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced placement courses or a vocational education program).~~
- ~~(b) Beginning not later than the first IEP to be in effect when the child turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:~~
- ~~(i) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and~~



(ii) ~~The transition services (including courses of study) needed to assist the child in reaching those goals.~~

(3) Transfer of rights at age of majority

Beginning not later than one year before the child reaches eighteen years of age, which is the age of majority under Ohio law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the IDEA that will transfer to the child on reaching the age of majority, as specified in rule 3301-51-05(D) of the Administrative Code.

(4) Construction

Nothing in this rule shall be construed to require:

- (a) That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the IDEA; or
- (b) The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

**3301-51-07(I)(1)**

(I) IEP team

(1) General

The school district must ensure that the IEP team for each child with a disability includes:

- (a) The parents of the child;
- (b) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (c) Not less than one special education teacher of the child or, where appropriate, not less than ~~then~~ one special education provider of the child;

(d) **A representative of the school district who:**

*these are OR*  
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- (i) **Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;**
- (ii) **Is knowledgeable about the general education curriculum; and**

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**(iii) Is knowledgeable about the availability of resources of the school district.**

- (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (I)(1)(b) to (I)(1)(f) of this rule;
- (f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (g) Whenever appropriate, the child with a disability.

**3301-51-07(K)**

**(K) When IEPs must be in effect**

**(1) General**

By the child's third birthday and at the beginning of each subsequent school year, each school district must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in paragraph (H) of this rule. The IEP shall be implemented as soon as possible following the IEP meeting.

- (2) The initial IEP must be developed within whichever of the following time periods is the shortest:
  - (a) Within thirty calendar days of the determination that the child needs special education and related services;
  - (b) Within ninety calendar days of receiving parental consent for an evaluation; or
  - (c) Within one hundred twenty calendar days of the receipt of a request for an evaluation from a parent or school district.

**(3) Initial IEPs; provision of services**

Each school district must ensure that:

- (a) A meeting to develop an IEP for a child is conducted within thirty days of a determination that the child 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 child in accordance with the child's IEP.

(c) Within three months after a student identified with disabilities begins receiving services for the first time under an IEP, the parents of the child are informed that the child is required to undergo a comprehensive eye examination in accordance with Revised Code section 3323.19.

(4) Accessibility of child's IEP to teachers and others

Each school district must ensure that:

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in paragraph (K)(4)(a) of this rule is informed of:

(i) The teacher's and provider's specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(5) IEPs for children who transfer school districts in the same state

If a child with a disability (who had an IEP that was in effect in a previous school district in the same state) transfers to a new school district of residence in the same state, and enrolls in a new school within the same school year, the new school district of residence (in consultation with the parents) must provide a free and appropriate public education (FAPE) to the child (including services comparable to those described in the child's IEP from the previous school district of residence), until the new school district of residence either:

(a) Adopts the child's IEP from the previous school district of residence; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in paragraphs (H) to (L) of this rule.

(6) IEPs for children who transfer from another state

If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to a new school district of residence in Ohio, and enrolls in a new school within the same school year, the new school district of

residence (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school district of residence), until the new school district of residence:

- (a) Conducts an evaluation pursuant to paragraphs (E) to (G) of rule 3301-51-06 of the Administrative Code (if determined to be necessary by the new school district of residence); and
  - (b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in paragraphs (H) to (L) of this rule.
- (7) Transmittal of records

To facilitate the transition for a child described in paragraphs (K)(5) and (K)(6) of this rule:

- (a) The new school district of residence in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district of residence in which the child was enrolled, pursuant to 34 C.F.R. 99.31(a)(2) (July 1, 2005); and
- (b) The previous school district of residence in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district of residence.

### **3301-51-08 Parentally placed nonpublic school children.**

#### **Add New Section (S)**

##### **(S) Jon Peterson Special Needs Scholarship Program considerations**

- (1) Children who are participating in the "Jon Peterson Special Needs Scholarship Program," established by section 3310.52 of the Revised Code, and enrolled in a special education program at a registered private provider or alternative public provider are unilaterally privately placed students and not entitled to a free and appropriate public education.**
- (2) The school district of residence is required to evaluate students with suspected disabilities, including students who attend private programs within the district. The district will reevaluate the student every three years, unless the parent and district agree that reevaluation is not necessary.**

- (3) The school district of residence shall create the initial IEP that is required for these children to participate in the Jon Peterson Special Needs Scholarship Program. The IEP team will review the IEP each year.
- (a) There is no requirement that the scholarship provider provide all of the services set forth on the IEP.
- (b) The Ohio Department of Education will investigate written complaints at a school district of residence has violated a requirement of IDEA or Ohio Adm. Code, but will not investigate allegations concerning the implementation of the IEP by a provider or whether the child has received FAPE.
- (c) A parent or student may file a request for due process challenging decisions related to the identification or evaluation of a child, but cannot file a request for due process related to the services provided by the private provider or whether the child has received FAPE while enrolled in the scholarship program.

### **3301-51-09 Delivery of services**

- At this time a work group is currently performing a caseload ratio study, “The Office for Exceptional Children’s Caseload Ratio Project.” The study is being led by Dr. Charles Carlin from the University of Akron. Dr. Carlin is working with 21 Local Educational Agencies who have developed and are currently implementing alternative caseload ratio plans. The study will be completed in the spring of 2013 and will be presented to the Caseload Ration Steering Committee with recommendations.
- In addition, the language in Senate Bill 770 (see below), precludes any changes to the rules regarding caseload ratios. As a result, ODE will refrain from revising Rule 3301-51-09 Delivery of Service at this time. Once the information obtained from the caseload ratio study becomes available to ODE, we will resume the process of reviewing proposed revisions to this rule.
  - *SB 770: Notwithstanding any changes in the rules adopted by the State Board of Education under Chapter 3323 of the Revised Code, school districts shall continue to comply with the requirements of the version of those rules in effect on May 1, 1998, with respect to any requirements limiting the number of students per licensed or certificated professional.*

### **3301-51-10 Transportation of children with disabilities**

Amendments to this rule are posted online through the Office of Pupil Transportation:

<http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=1637&ContentID=136984&Content=137056>

### **3301-51-11 Preschool students with disabilities**

#### **3301-51-11(B)(2)**

##### **(B) Interagency agreements**

Each school district shall develop and annually review interagency agreements with all partners to ensure a free appropriate public education (FAPE) is provided to all preschool children with disabilities between the ages of three through five residing in the school district. At a minimum, agreements with the following partners are required:

- (1) “Head Start” programs within the school district’s service delivery area that provide for:
  - (a) Service coordination for preschool children with disabilities, three through five years of age, in a manner consistent with the state interagency agreement for service coordination with “Head Start”; and
  - (b) Transition of children eligible for special education and related services as a preschool child at age three.
  
- (2) The county ~~family and children first council~~ agency responsible for the “Help Me Grow” service delivery system that provides for the transition of children from early intervention services to preschool special education and related services at age three in a manner consistent with the state interagency agreement for service coordination with “Head Start”. The agreement must include, but is not limited to, the following requirements:
  - (a) A process by which strategies are evaluated for effectiveness and appropriate revisions to the agreement are made;
  - (b) A process by which “Help Me Grow” refers children who are forty-five days or less from their third birthdays and are suspected of having disabilities. These children must have an evaluation completed within sixty days of parental consent for evaluation, but an individualized education program (IEP) is not required by their third birthdays;
  - (c) Shared responsibilities for evaluating children suspected of having disabilities referred through “Help Me Grow” at least forty-six days before their third birthdays but not more than ninety days before their third birthdays;
  - (d) Shared responsibilities for child find, including locating, evaluating, and identifying children with disabilities birth through age five; and

- (e) Timelines and processes for sharing information about children who may be transitioning as a preschool child with a disability from “Help Me Grow” early intervention services to special education and related services.
- (3) County boards of MR/DD for identification, service delivery, and financial responsibilities to adequately serve preschool children with disabilities three through five years of age.

**3301-51-11(D)(5)**

**(D) Transition from Part C early intervention**

A school district is responsible for the following activities related to transition for a child receiving “Help Me Grow” early intervention services under Part C of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA):

- (1) If invited by a representative of the Part C system, a school district representative shall attend a conference to discuss transition from early intervention services to preschool for a child suspected of having a disability. This conference may occur up to nine months before a child’s third birthday. The school district shall document participation in the conference.
- (2) At the parent’s request, the school district shall invite the Part C service coordinator to the initial IEP meeting.
- (3) If there is a suspected disability and the child is eligible for special education and related services as a preschool child, the school district shall work with the family to ensure an IEP is in place and implemented by the child’s third birthday. The dates for the initiation and duration of services shall be determined by the evaluation team or the IEP team and other qualified professionals.
- (4) A school district must consider extended school year services as part of the IEP process for children transitioning from Part C services. There is no requirement that a student must have previous school experience to receive extended school year services. Based upon data available from the Part C system, the evaluation team or the IEP team and other qualified professionals shall determine if extended school year services are required as outlined in paragraph (G) of rule 3301-51-02 of the Administrative Code.
- (5) A school district determined by the Ohio department of education to be noncompliant with the transition timeline to have an IEP in place by an eligible child’s third birthday:



- (a) Shall develop a corrective action plan in addition to the interagency agreement. The corrective action plan must include the signature of a representative of the ~~family and children first council~~ agency responsible for "Help Me Grow" Part C services; and
- (b) May have funds reduced or terminated by the Ohio department of education.

**3301-51-20 Standard for admission, transfer, suspension, and expulsion- the Ohio state school for the blind and the Ohio state school for the deaf.**

This rule is not due for revision at this time.

**3301-51-21 Rules for providing braille translation computer media for schoolbooks that are listed for sale by publishers with the superintendent of public instruction.**

No substantive changes to this rule.

**\*For the complete listing of the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* Posted for Public Comment, go to:**

<http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=967&ContentID=136416&Content=137511>

