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#### Introduction

Charter schools began to open their doors in Utah in 1999. Since then, the number of has expanded yearly, with over 50,000 students enrolled in charter schools in the 2011–2012 school year. Founders of charter schools cite the ability to provide choice to parents regarding where they want their children to receive a public school education as one of the main reasons for establishing new charters. At the same time, students with disabilities and their parents retain the rights guaranteed by the Individuals with Disabilities Education Act. Each group of organizers applies for a charter by completing an application process and appearing before the State Charter School Board. If the charter is approved, the charter school then has one school year to prepare to open its doors to students. The following school year is the first year of operation with students. Both the application process and the preparatory year must include plans for students with disabilities.

With few exceptions, charter schools in Utah are local education agencies, authorized and chartered by the State Charter School Board. This means that each school has responsibility and accountability for all the students enrolled in the school, including those with special needs. In those instances where a charter school is chartered by a school district, the responsibility and accountability are shared.

This primer is prepared for new charter schools and also as a handy, brief reference for existing schools. Comprehensive information about special education is contained in the Individuals with Disabilities Education Act (IDEA), Utah State Board of Education Special Education Rules (USBE SER), and other references located on websites listed in the Resources section of this document (see page 34).

# **Legal Basis and Requirements**

Three Federal laws form the primary basis of the legal requirements for serving students with disabilities in charter schools. The Utah State Code Annotated (UCA) and the USBE SER also contain State standards and requirements for providing special education to students with disabilities in Utah.

ADA

The Americans with Disabilities Act of 1990 (and its 2008 amendments) is an unfunded statute that requires access to public buildings and functions for persons with disabilities. The Act prohibits discrimination on the basis of disability for all activities of State and local governments, regardless of whether those entities receive Federal funds. This includes school districts and charter schools.

504

Section 504 of the Rehabilitation Act of 1973 is an unfunded statute that prohibits discrimination on the basis of disability by recipients of Federal funds. While the definition of disabilities and eligibility standards differ, 504 regulations contain free appropriate public education requirements and procedural safeguards that are similar to IDEA requirements.

IDEA

The Individuals with Disabilities Education Act (2004) Part B and its implementing regulations (2006 and 2008) contain requirements that ensure that students with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education or special education and related services designed to meet students' unique needs and prepare them for employment and independent living; to ensure that the rights of students with disabilities and their parents are protected; to assess and ensure the effectiveness of efforts to educate students with disabilities; and to provide Federal funds to assist States and local education agencies in the education of students with disabilities.

USBE SER Each State develops Rules aligned with the Federal law and regulations. The Rules contain requirements and procedures for Local Education Agencies (LEAs) and other public agencies that provide special education to students with disabilities in the State. The USBE SER governs the provision of special education in Utah schools.

UCA

State law, often referred to as the Utah Code Annotated, addresses the requirements for Utah schools to educate students with disabilities, and the funding mechanisms for special education State dollars.

Charter schools in Utah are public schools and are subject to the requirements of all of these laws and rules.

# **Specific Charter School Requirements**

The IDEA 2004 and the USBE SER specifically address some charter school requirements.

#### FAPE:

- IDEA regulations and USBE SER apply to LEAs that are public charter schools (USBE SER I.C.1(b)).
- Each charter school LEA shall provide a free appropriate education program for all eligible students with disabilities who are enrolled in the school (UCA 53A-15-303).
- Students with disabilities ages 3 through 21 who attend public charter schools and their parents retain all rights under Part B of the IDEA and the USBE SER (USBE SER III.O.1).
- Public charter schools that are LEAs receive funding under Part B and are responsible for ensuring that all of the requirements of Part B of the IDEA and the USBE SER are met (USBE SER III.O.2).
- For schools chartered by a school district, the district must serve students with disabilities enrolled in charter schools in the same way they serve such students in their other schools and provide funds to their other schools (USBE SER III.O.4).

#### Child Find:

- Public charter schools are responsible for Child Find for students enrolled in their own school, and have no Child Find responsibility for private school students unilaterally placed by their parents when FAPE is not at issue (USBE SER II.A.3).
- The Utah State Office of Education (USOE) provides technical assistance regarding Child Find to LEAs, including public charter schools (USBE SER II.A.4(b)).

#### Federal Funding:

- The State receives federal IDEA funding to support LEAs in providing services and programs for students who qualify. A portion of this funding is retained by the USOE for Administration and State-Level Activities; the remaining funds are distributed among LEAs (USBE SER VIII.P.6(a)).
- IDEA funding amounts are calculated based on enrollment data provided by the LEA in October and December.
- All LEAs are eligible for IDEA funding. Additional requirements must be met by the LEA to receive the funds.
  - The LEA must have policies, procedures, and programs that are consistent with the USBE SER (USBE SER IX.A.1).
  - o The LEA must meet financial requirements described in the Fiscal Compliance, Accountability, and Monitoring (FiCAM) manual.
  - o The LEA must submit application for IDEA funds through the Utah Consolidated Application (UCA).

- o IDEA funds are restricted, and may only be used to provide services and programs for students with disabilities who qualify under IDEA.
- IDEA funds are available on a reimbursement basis. The LEA must make the expenditure before reimbursement is requested.
- USOE notifies LEAs by March 30 of each year of the availability of Federal funds under Part B of the IDEA. Amounts are finalized in the fall.

#### State Funding:

- The State provides special education funding to LEAs to provide services and programs for students who meet eligibility requirements under IDEA.
- State special education funding amounts are calculated based on enrollment data provided by the LEA in October, December, and July.
- All LEAs are eligible for State special education funding.
- Charter schools are not eligible for state special education preschool funds.
- Additional requirements must be met by the LEA to receive the funds.
  - The LEA must have policies, procedures, and programs that are consistent with the USBE SER (USBE SER IX.A.1).
  - o The LEA must meet financial requirements described in the Fiscal Compliance, Accountability, and Monitoring (FiCAM) manual.
  - State special education funds are restricted, and may only be used to provide services and programs for students with disabilities who meet eligibility requirements under IDEA.
  - State special education funds are available through monthly allotment. The LEA receives 1/12 of the total allocation each month.
  - Any unused State special education funds may be carried forward to the following year. These carry-forward funds are subject to the same restrictions.
- The USOE notifies LEAs of the estimated availability of state special education funds prior to the legislative session. Amounts are finalized in early summer.

#### Other:

- Charter schools must be represented on the Utah Special Education Advisory Panel (USEAP) (USBE SER VIII.O.1(h)).
- Each charter school has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance (including the performance of students with disabilities) will be measured pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school (USBE SER I.E.6(k)).

# **Civil Rights of Students Attending Charter Schools**

Under Federal and State law, a charter school may not discriminate on the basis of disability or the need for special education services. Outreach and recruitment efforts should be targeted toward all segments of the community, including students with disabilities.

A charter school may not deny admission to students with disabilities solely because they may need special education or special education and related services. Instead, the school must give students with disabilities the opportunity to meet minimum admission criteria, consistent with the school's mission and civil rights laws. If more students apply for admission than can be accommodated, the school must use a lottery to make initial enrollment decisions. Once a student on an IEP is selected through a non-discriminatory admissions process, an IEP Team meeting must be convened to make appropriate programmatic and placement decisions for the student. The practice of "counseling out"—informally discouraging parents from enrolling their child with disabilities in the charter school—is not permitted.

# **Starting Up the Special Education Program at Charter Schools**

#### **Charter School Responsibilities**

- 1. Accept all students with disabilities who apply and/or are drawn from the lottery.
- 2. Develop an LEA Special Education Policies and Procedures Manual that describes how the charter school will implement the USBE SER.
- A list of what must be addressed is located in USBE SER IX.A.2 (a-e).
- A model manual is available and may be used as a starting point, with additions specific to the charter school at <a href="http://www.schools.utah.gov/sars/Instructional-services.aspx">http://www.schools.utah.gov/sars/Instructional-services.aspx</a>.
- 3. Follow procedures in USBE SER and LEA Manual.
- Once the charter school's own Special Education Policies and Procedures Manual
  has been approved by the USOE and the local charter board, it is important that all
  personnel follow the procedures therein. Teachers, paraprofessionals, and
  administrators must familiarize themselves with what the school has committed to
  implement.
- 4. Obtain special education files from other LEAs.
- A new charter school will be enrolling students with disabilities from a variety of other LEAs, both school districts and charter schools, and possibly from other States. It is very important to obtain the special education records from the previous LEA as soon as possible to ensure that the charter school does not find itself out of compliance with implementing a current IEP for each eligible student by the time the school year begins. The IDEA requires that a receiving LEA within the State provide comparable services to the current IEP until such time as the IEP Team may meet to make revisions. If a student comes from out of state, comparable services must be provided until eligibility is determined based on the State and LEA requirements and, if the student is eligible, the IEP Team can meet to develop a new IEP. A Transfer Student Checklist is located in the Appendix (pages 43–44).
- In the State of Utah, a parentally signed release of records is not required for one LEA to send a special education file to another LEA. The procedural safeguards give parents notice of this. Efforts to obtain records in a timely way may need to include phone calls to the sending school or district, mailed or faxed requests for records, or even a visit to the local school holding the records.

- 5. Organize special education files.
- A new charter school will be receiving records for students with disabilities from a variety of other LEAs. Each LEA determines a different organizational method for the files. A charter school must establish how it wants its own files to be organized, and then reorganize each incoming file in the local format. This will enable the special education staff to (1) analyze each file to determine compliance, (2) extract data on due dates, (3) identify current goals and services, and (4) stay current with all required procedures. Often charter schools may find that an IEP team needs to meet to amend or revise an incoming IEP based on the student's current needs.
- A list of all students with current IEPs with the dates of referral, eligibility determination, IEP development, goals, type and amount of services, and program modifications, accommodations, and supports is functional in tracking each student's program and in assigning special education personnel. In addition, it provides a convenient way to produce a summary of the student's IEP to the regular education classroom teacher(s). A Minimum Contents Checklist form should be placed in each file, and the file should be reviewed to ensure that these documents are present. This list is in the Appendix to this primer (see page 45).

#### Choose forms.

- Another decision to be made during the start-up phase, and before the students arrive, is which forms the charter school will use to document the required components of the IDEA. Charter schools in Utah usually use either the State forms, available at no cost at <a href="http://schools.utah.gov/sars/Laws,-State-Rules-and-Policies/IEP-Forms.aspx">http://schools.utah.gov/sars/Laws,-State-Rules-and-Policies/IEP-Forms.aspx</a>, or forms from an IEP company. It is not necessary to redo every incoming IEP or other document to transfer it to the charter school's own selected forms. As each due date for review of IEP or reevaluation for determination of continuing eligibility comes up, the forms can be gradually incorporated into each file. The selected set of forms must also be used consistently for all new referrals.
- 7. Arrange for storage of confidential special education records.
- Special education files must be kept in a locked filing cabinet or other secure place to ensure the level of confidentiality required under the IDEA and the Family Education Rights and Privacy Act (FERPA). There is no requirement for fireproof storage; however, in the event of a disaster it is very difficult to recreate a compliant file. The cabinet must have an Access Authorization List attached to the outside, showing which LEA personnel have the right to examine the files. These include those persons with a legitimate need to know, such as the school director or principal, the special education teacher(s), and related service providers. General education teacher(s) working with the student may review the file and complete the record of access form in the file. A sample form is in the Appendix (see page 46). On request, the LEA must provide parents with a list of the types and locations of education records collected, maintained, or used by the LEA.

- 8. Provide for English Language Learners (ELL).
- Students with disabilities who are English Language Learners present a challenge
  with balancing the impact of having a primary language other than English with the
  identification of a disability. An English Language learner who is suspected of having
  a disability must be evaluated with appropriate tools and strategies to determine
  whether the student is eligible for special education or special education and related
  services. Speaking a different primary language, though not a disability, often
  adversely affects the student's educational performance.
- Students who are both English Language Learners and students with disabilities must have both kinds of needs addressed in the IEP.
- 9. Become familiar with special education funding.
- The LEA is responsible and accountable for use of funds provided for the education
  of students with disabilities from Federal and State sources. The charter school may
  also expend regular education funds for the education of students with disabilities as
  needed.
- The LEA is required to maintain accounting records that clearly document all uses of Federal (IDEA) special education funds separately from all other funds. The accounting records must also document all uses of State special education funds separately from all other funds.
- The LEA is required to develop an inventory tracking system for any equipment purchased with IDEA funds. Special care should be taken to track items that are easy targets for theft, such as laptops and other technologies.
- If the LEA chooses to use IDEA funds to pay for special education personnel (in full or in part), a system of time and effort certification must be in place.
- Charter schools are subject to Education Department General Administrative Regulations (EDGAR) requirements, and to OMB Circular A-122.
- Complete details of Fiscal Compliance, Accountability, and Monitoring requirements and are found in the FICAM Manual at <a href="http://schools.utah.gov/sars/DOCS/finance/ficam">http://schools.utah.gov/sars/DOCS/finance/ficam</a> 9-15-11.aspx.

#### 10. Collect data.

 The State Education Agency (SEA) is required to collect a wide variety of information regarding both compliance and results of special education in local LEAs. Most of these data are then reported to the Department of Education Office of Special Education Programs (OSEP) in the Section 618 data reports. Other data are reported in the SEA's Annual Performance Report (APR). Each LEA also receives

an APR and a Letter of Determination of the overall status of the LEA's special education program based on the 20 Indicators in the APR. See <a href="http://www.schools.utah.gov/sars/Quick-Links/Performance-Plan.aspx">http://www.schools.utah.gov/sars/Quick-Links/Performance-Plan.aspx</a>.

- The Self-Contained and Resource Attendance Management (SCRAM) is a system used to collect information on each student with disabilities being served by LEAs in Utah. The SCRAM data are entered into the LEA's local SIS and then uploaded to the State. Some SCRAM data are used to allocate State funding for LEAs. The SEA may also ask LEAs for other data as needed.
- Complete details of data collection and accountability are found in the Special Education Data Manual at <a href="http://schools.utah.gov/sars/DOCS/data/datamanual">http://schools.utah.gov/sars/DOCS/data/datamanual</a>
   \_aspx.

# 11. Prepare for monitoring.

- <u>SEA Responsibility.</u> The IDEA charges the SEA, the USOE, with the responsibility of
  monitoring compliance and results in each LEA. The State's monitoring system is
  called Utah's Program Improvement Planning System (UPIPS). UPIPS functions on
  a five-year cycle with different activities for the LEA and SEA in each year of the
  process. Information about UPIPS is available at <a href="http://schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Compliance.aspx">http://schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Compliance.aspx</a>. The USOE conducts UPIPS training for
  LEAs annually.
- Charter schools also participate in a miniPIPS process in the first year of operation
  with students. MiniPIPS consists of an on-site visit on a date arranged with the
  charter school in the late fall. Activities during the visit include student file reviews,
  interviews with staff, and classroom observation. Subsequent to the visit, support for
  correction of any identified noncompliance issues is provided at USOE expense.
  Additional first-year support for special education programs and staff may be
  provided at the school's request.
- LEA Responsibility. Self-monitoring of compliance and results is good practice for every LEA. Establishment of a regular system to examine a sample of files with respect to IDEA requirements is recommended. The USOE has web-based software that LEAs may access to conduct these file reviews upon request. Surveys of stakeholders and review of the performance of students with disabilities on the State- and LEA-wide assessment are other lines of evidence with respect to the program functioning. An intentional examination of the overall progress and impact of special education on the educational performance of students with disabilities will assist the school in making informed decisions about possible adjustments in the special education program.

# Six Major Legal Concepts for Special Education Programs

These six principles serve as the basis for the IDEA, its statute and regulations, and are also the foundation for special education case law. The principles are the underlying foundation for the delivery of special education in public schools, including charter schools.

#### 1. Zero Reject

#### Definition

Federal law requires that all children are afforded an equal educational opportunity and a State may not deny a student an education on the basis of disability status. This applies to all students in Utah ages three to 22.

A student with a disability may not be denied access to a public education based on the nature or severity of the disability, nor on the basis of his/her needs arising from the disability. These needs must be addressed without regard for the type or amount of services required to provide a free appropriate public education.

The IDEA is an entitlement law: a student must be entitled to its protections (be eligible for special education or special education and related services) and once eligibility is established, the student must receive those services.

#### Child Find

LEAs are required to identify, locate, evaluate, and provide a free appropriate public education to students suspected of having disabilities. For charter schools, Child Find applies to students enrolled in the school as well as siblings of enrollees. Students younger or older than the school's charter serves should be referred to the school district of the parents' residence.

#### Charter Schools

Charter schools are accountable for all of the zero reject components of the IDEA as described above.

#### 2. Nondiscriminatory Evaluation

#### Definition

Evaluation procedures are used to determine whether a student has a disability under the IDEA and the nature and extent of the special education or special education and related services that the student needs. The evaluation includes collection of existing data as well as, with parental consent, additional assessments that the eligibility team, including the parent, determine are needed.

#### **Nondiscriminatory**

The evaluation instruments must be:

- Provided and administered in the student's native language or other mode of communication.
- Validated for the specific purpose for which they are used.
- Administered by trained personnel.
- Tailored to assess specific areas of educational need and not merely those designed to produce a single general intelligence quotient.
- Reflective of the student's aptitude or achievement and not reflective of the student's impaired sensory, motor, or communication skills.

#### Timeline

An evaluation for initial eligibility must be completed within 45 school days of the date the LEA receives a signed consent for evaluation from the parents. Reevaluation must be conducted once every three years, unless the parents and the LEA agree that a reevaluation is not needed to determine whether the student continues to be a student with a disability. A meeting must be held and a new Eligibility Determination form must be completed with the most current data available even when no reevaluation is conducted.

#### **Review of Existing Data**

For initial evaluations, as appropriate, and for all reevaluations, the eligibility team must review all existing data and determine whether sufficient data are available to determine whether the student is or continues to be a student with a disability. Existing data may include results of State Criterion-Referenced Tests (CRTs), school-wide assessments, DIBELS, classroom performance data, office referrals, parent input, and information from other sources

# 3. Individualized Education Program (IEP)

#### Definition

An IEP is a written statement for an eligible student with disabilities who is in need of special education or special education and related services, and that is developed by an IEP Team with content as specified in the USBE SER.

#### **IEP Team**

A team consisting of the parent, a regular education teacher of the student, a special education teacher, a representative of the LEA, and a person who can interpret the results of an evaluation, who may be another member of the team.

#### Notice of Meeting

The members of the IEP Team must be notified of the time, place, and purpose of each meeting, as well as who is expected to be in attendance. Parents must be notified early enough to have an opportunity to attend and be informed that they may bring other persons knowledgeable about the student. The meeting is scheduled at a mutually agreed-on time and place.

#### Timeline

An IEP must be developed for each student with disabilities within 30 calendar days of determination of initial eligibility for special education and related services. Implementation of the IEP must begin as soon as feasible—a short time is allowed for the school to put in place new services, assistive technology, and so on. The IEP must be reviewed and revised, as appropriate, at least once per year. This means an IEP dated 9/8/11 must be reviewed and revised on or before 9/7/12 in order to be within 365 calendar days. An IEP may be reviewed and, based on a team decision, revised more often if a member of the team requests it due to some change in the student's performance or needs.

#### Current Educational Levels

A Present Level of Academic Achievement and Functional Performance (PLAAFP) statement describes current baseline data in areas of strength and need, and tells how the disability affects access and progress in the general curriculum.

#### Annual Goal(s)

Measurable annual goals to address each need identified in the PLAAFP are estimates of the performance level the student can reach within one year of the date of the IEP. The goal must contain a description of the academic or social behavior the student will perform, the conditions under which the behavior is to be performed, and the criteria for meeting the goal. The IEP must state how the performance of the goal will be measured.

#### **Progress Reporting**

The IEP states how progress on the IEP goals will be measured and when progress will be reported to parents periodically.

#### Special Factors

The IEP Team must document that it considered and, if appropriate, addressed, five special factors:

- 1. Limited English proficiency and language needs as related to the IEP.
- 2. For a student who is blind or visually impaired, instruction in Braille if needed.

- 3. Communication needs of the student and, if the student is deaf or hard of hearing, opportunities for direct communication with peers and instruction in the student's language and communication mode.
- 4. Assistive technology and, if needed, whether the student needs the technology at home.
- 5. For a student whose behavior impedes his learning or that of others, use of positive behavior interventions and supports and other strategies.

# Services and, if any, Related Services

Special education services are described as to type, amount, and location of service delivery. Special education services are specially designed instruction—that is, instruction adapted to the needs of an eligible student by changing the content, methodology, or delivery of instruction to address the unique needs resulting from the student's disability. Related services, if any, may be needed in order for the student to access the special education services. Related services are described as to type, amount, and location of service delivery.

#### Physical Education

The IEP Team must determine whether the student will participate in regular physical education if the school provides physical education as part of the core curriculum in that grade, will need adaptive physical education, or has physical limits that are otherwise to be addressed.

#### Participation in Non-Academic and Extracurricular Activities with Non-Disabled Peers

The IEP must state the extent to which a student will not participate in non-academic and extracurricular activities with non-disabled peers.

#### Supplementary Aids and Services; Program Modifications

Supplementary aids and services and program modifications or supports for school personnel are described, including accommodations needed for assessments. These may be designated "as needed" if appropriate.

#### <u>Initiation and Duration of Services</u>

Dates for the initial provision of services and the anticipated duration of services are specified.

#### Extended School Year

The IEP Team must consider whether a student with disabilities requires special education services during breaks in the normal school year in order to receive a FAPE.

#### Transition Plan

The IEP in effect when a student with disabilities turns 16 years of age must contain a transition plan that contains transition services, a coordinated set of activities designed to improve the academic and functional achievement and facilitate the student's movement from school to post-school activities. This means that the transition plan should be developed at the IEP Team meeting when the student is 15 years old. The plan is to be reviewed and revised as needed annually.

#### Changes

Changes to an IEP may be made without a formal meeting, in consultation with the parent and other IEP Team members. The parent must be given Written Prior Notice of the revised IEP with the amendments made.

#### Implementation

The IEP must be implemented within a reasonable time after it is developed and the parents receive Written Prior Notice of the LEA's intent to begin providing the services, program modifications, and accommodations on the IEP.

## 4. Free Appropriate Public Education (FAPE)

#### <u>Definition</u>

A FAPE is special education or special education and related services provided at public expense, under public supervision and direction, and without charge, that meets the standards of the USOE and Part B of the IDEA; it includes preschool, elementary, and secondary school education in Utah, and is provided in conformity with an IEP.

#### Free

The term "free" applies to the special education program of a student with disabilities. Since nearly all students with disabilities also participate in regular education for some part of the school day and year, any fees assessed to all students may also be asked of students with disabilities.

## <u>Appropriate</u>

The term "appropriate" is not specifically defined in the IDEA. Court decisions have determined what "appropriate" is on a case-by-case basis, depending on the unique needs of each individual student. In *Hendrick Hudson District Board of Education v. Rowley*, the U. S. Supreme Court developed a two-part test for determining whether a student with disabilities has received a FAPE. First, did the LEA comply with the procedural requirements of the IDEA? And second, was the IEP developed through IDEA procedures reasonably calculated to confer meaningful educational benefit? If these two requirements are satisfied, then the LEA has met its obligations under the

IDEA. Meaningful benefit was variously described as "some benefit," "more than trivial," and "establishing a basic floor of opportunity." The IDEA is not intended to maximize the potential of each student with a disability.

In establishing that FAPE has been provided, it is critical that an LEA keep accurate records of student progress on IEP goals and progress in the general curriculum.

#### Disputes

The parents have the right to challenge the appropriateness of the special education program for a student with disabilities using the mediation, State complaint, or due process hearing procedures in the Procedural Safeguards.

#### 5. Least Restrictive Environment (LRE) and Placement

#### <u>Definition</u>

To the maximum extent appropriate, students with disabilities must be educated with peers who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

## Range of Placement Options Available

Each LEA, including charter schools, must have the full continuum of alternative placement options in the IDEA available for consideration by IEP-Placement Teams. Options are:

- Regular education with or without itinerant services.
- Special class.
- Special school.
- Home instruction.
- Instruction in hospitals and institutions.

A charter school should plan ahead for this continuum, particularly for the possible need for a special class. The most restrictive options would need to be arranged with a neighboring school district, private school, or hospital if the need arises.

#### Team Decision

Placement decisions for a student with disabilities are made by a group of persons—including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options—and are made in conformity with LRE.

#### Timeline

Placement decisions are made at least annually. At the annual review, the placement may be maintained or changed.

#### Change of Placement

If the team decides on a change of placement, the parents must be provided with Written Prior Notice of the change.

#### Consent for Initial Placement/Provision of Services

The LEA must obtain informed consent from the parent of a student with disabilities before the initial provision of special education or special education and related services to the student. The consent form documents the placement selected by the team as well as the reason(s) for the option selected.

#### **Revocation of Consent**

If a parent of a student with disabilities, after the initial provision of services, revokes consent in writing for the continued provision of special education or special education and related services, the LEA may not continue to provide such services. The LEA must provide Written Prior Notice to the parent before ceasing the services.

## 6. Procedural Safeguards

#### Definition

Sometimes referred to as "parents' rights," the procedural safeguards of the IDEA are requirements that ensure that students with disabilities and their parents, as well as LEAs, have due process rights.

# Parental Opportunity to Participate

The parents of a student with disabilities must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student. The LEA must ensure that a parent of a student with disabilities is a member of any group that makes decisions on the educational placement of the student. If parents cannot participate in person, participation by other means, including telephone, may be used. Participation means more than being present; it means parental input is considered thoughtfully by the rest of the team, with an open mind.

Parents who speak only a language other than English may need an interpreter at meetings in order to participate. If documents cannot feasibly be provided in the parents' native language or mode of communication, an interpreter may explain the procedural safeguards, IEP content, eligibility determination, consents, and others.

#### Parental Opportunity to Examine Records

The parents of a student with a disability may inspect and review all education records with respect to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student. Parents have the right to request amendments to records, including the right to a hearing.

#### Independent Educational Evaluation (IEE)

The parents of a student with disabilities have the right to obtain an independent educational evaluation if they disagree with an evaluation obtained by the LEA. The IEE must meet the standards of the USBE SER. The LEA must provide the parents with information about where such an IEE may be obtained and the LEA criteria. The IEE is provided at no cost to the parent. The results of an IEE must be considered by the team.

## Written Prior Notice

Written Prior Notice (WPN) must be provided to the parents a reasonable time before the LEA proposes, or refuses, to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a student. The notice must be provided in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. The notice must contain all the requirements of the USBE SER. Written Prior Notice of proposals is embedded in the forms commonly in use in Utah, including those for consents, eligibility determination, IEPs, placement, and review of existing data. Written Prior Notice of refusal must be given in a different format, either a letter or a form such as that available in the Appendix (pages 47–48).

#### Procedural Safeguards Notice

A copy of the procedural safeguards must be given and explained to parents of a student with disabilities at least once per year, and also upon initial referral or parent request for evaluation; upon receipt of the first State complaint or due process complaint in a school year; and upon request of the parent.

#### Parental Consent

Informed consent is voluntary on the part of the parent and may be revoked in writing at any time. Consent is required prior to an evaluation and prior to initial provision of special education or special education and related services. Informed consent means that the parent has been fully informed, in the parent's native language or other mode of communication, of all information relevant to the activity for which consent is sought; that the parent understands and agrees in writing to the carrying out of the activity; and that the parent understands that consent is voluntary. If a parent revokes consent, the LEA will not be considered in violation of the requirement to make FAPE available and

does not have to convene an IEP Team meeting for such a student. The LEA must give the parent WPN of its intent to cease services if consent is revoked.

#### State Complaint

Any person may file a formal State complaint with the LEA alleging violations of the IDEA and including the student's identifying information. The LEA has 30 days in which to conduct an investigation and issue a written decision. The complainant then has 10 days to file an appeal with the USOE. The USOE will conduct its own investigation and issue a written decision within 60 days of the original complaint. The USOE's decision is final.

If the parents disagree with the appeal decision, they may exercise their right to file a due process complaint.

#### **Mediation**

A parent or an LEA may request mediation of a disagreement about the IDEA process with respect to a student with disabilities at any time. The USOE will assign and bear the costs of a trained mediator. Mediated agreements are binding on both parties.

#### **Due Process Complaint**

The parents of a student with disabilities or an LEA may file a due process complaint. The USOE will assign a trained due process hearing officer. Within 45 days, the LEA will initiate a resolution meeting with the parents. When the resolution period ends or parties agree that no resolution is possible, the hearing officer has 45 days to hold a hearing and produce a written decision.

#### Placement During Complaints

During the pendency of a State or due process complaint, a student with disabilities shall remain in the student's current placement unless the LEA and the parents agree otherwise.

#### Civil Actions

Any party not satisfied with the decision of a due process hearing officer may bring a civil action with respect to the complaint notice requesting a due process hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States. If appealed to a State court, the appeal must be filed within 30 days of the due process hearing decision.

#### Attorneys' Fees

A court may award reasonable attorneys' fees to the prevailing party who is the parent of a student with a disability; or to a prevailing party who is an LEA against the attorney of a parent who files a complaint that is frivolous, unreasonable, or without foundation.

#### Confidentiality

The confidentiality of personally identifiable data, information, and records collected and/or maintained by the LEA must be protected at collection, storage, disclosure, and destruction stages. Persons examining records for appropriate reasons, such as USOE personnel for monitoring, must sign the record of access in each file. Information may be disclosed to other education agencies, including forwarding special education files to an LEA to which a student with disabilities is transferring. Parental notice of this procedure is contained in the procedural safeguards notice. Disclosure to non-educational agencies, persons, or organizations requires written parental consent.

#### **Discipline**

Students with disabilities who have been identified as eligible under the IDEA have specific protections in the area of discipline. For any violation of a student code of conduct, a student with disabilities may be removed from school through suspension for up to ten cumulative days in a school year. A disciplinary removal that is longer than ten days constitutes a change of placement.

When a removal that will be a change of placement is considered, the IEP Team must meet and determine whether the behavior in question is a manifestation of the student's disability. If it is a manifestation, the student must be returned to the previous placement unless the team determines a change of placement is appropriate. If it is not a manifestation, the student may be disciplined in the same way as a peer with no disabilities. However, as soon as removals total more than ten days, the LEA must provide FAPE—special education or special education and related services that enable student to advance toward the IEP goals and make progress in the general curriculum—during the removal.

If an incident involves special circumstances—weapons, drugs, or serious bodily injury—the LEA may place the student with disabilities in an Interim Alternative Educational Setting (IAES) for up to 45 school days without regard for manifestation determination. An IAES may be provided in an in-school suspension area, at home, through contracting with another LEA, or some other site as determined by the LEA. Services providing a FAPE must be provided during the time a student is in an IAES.

# **Sequence of IDEA Process**



# **IDEA Process Reminders**

Action	Details
Child Find	Train all staff. Be alert for students not making progress.
	Intervene and keep data and track results.
Referral	Teacher, parent, or other school personnel. Identify area(s) of concern, academic and/or social-behavioral. LEA representative decides whether referral needs no action, whether other services are required, or whether evaluation for eligibility should take place. If parent has requested evaluation and LEA representative decides no evaluation will be conducted, provide parent with Written Prior Notice of refusal.
Evaluation	Obtain parental consent for evaluation and give Written Prior Notice. Gather existing data from teachers, parents, school records. Determine kinds of tests needed. Use multiple assessment tools/methods aligned with student's abilities and language/communication system. Check evaluation requirements for disability categories. Complete within 45 school days of receiving consent.
Eligibility determination	Give team of qualified professionals and parent notice of eligibility meeting. Discuss evaluation findings and whether student meets all three prongs of eligibility under IDEA. Give parent Written Prior Notice.

IEP development	Within 30 days of eligibility determination. IEP team of parent, regular education teacher, special education teacher, and LEA representative. A member must be able to interpret results of tests.
Placement in LRE	Team determines setting in which IEP services may be provided. Consider continuum of alternative placement options, starting from regular education classroom. More restrictive option only if regular education with accommodations and program modifications cannot meet the student's needs. Give Written Prior Notice to parent.
Document participation in meeting	Those present sign the IEP to verify that they participated in its development.
Parental consent for initial placement	Consent means LEA may begin to provide special education or special education and related services to the student. No services may be provided without this consent.
IEP implementation	LEA staff implements services, related services, program modifications, supports, and accommodations on IEP as well as tracking progress on IEP goals and in the general education curriculum.

#### **Steps in the Evaluation Process**

#### Initial Evaluation

When a new referral has been reviewed by the LEA representative and sent forward for a comprehensive evaluation to determine eligibility and needs based on the disability:

- 1
- Gather existing data on academic and social performance
- Include classroom, intervention, statewide, and schoolwide test results
- 2
- Determine areas in which testing is needed
- Complete the Review of Existing Data form, if appropriate
- 3
- Obtain consent from parent for evaluation in areas of concern
- Provide and explain Procedural Safeguards to parents
- 4
- Conduct assessments using variety of appropriate tools
- Finish testing within 45 school days of receiving signed consent at school
- 5
- Summarize evaluation data for suspected category of disability
- Complete Eligibility Determination form
- 6
- Provide eligibility team, including parent, with Notice of Meeting to review evaluation data and consider eligibility
- 7
- Eligibility team meets and reviews evaluation data on summary report
- Add any relevant parent or staff input
- 8
- Determine whether student meets all 3 prongs of eligibility
- Eligibility team members sign Eligibility Determination form\*
- 9
- Give parent copy of Evaluation Summary/Eligibility Determination & WPN
- Develop IEP within 30 calendar days of determining student eligible

<sup>\*</sup>If student is not eligible, mark Eligibility Determination form "No" and give Written Prior Notice to parents by providing a copy of Eligibility Determination form.

## Reevaluation to Determine Continuing Eligibility

•Conduct reevaluation to determine continuing eligibility every 3 years • Gather existing data on academic and social performance • Talk to team and parent and determine additional testing needed, if any • Parent may request additional testing in specific areas 2 Complete the Review of Existing Data form •Obtain consent from parent for new testing, if needed 3 Conduct additional assessments, if needed 4 Summarize evaluation data for category of disability Complete new Eligibility Determination form 5 • Provide eligibility team, including parent, with Notice of Meeting to review evaluation data and consider whether student has continued eligibility 6 • Eligibility team meets and reviews evaluation data on summary report •Add any relevant parent or staff input 7 • Determine whether student continues to meet all 3 prongs of eligibility • Eligibility team members sign Eligibility Determination form\* 8

\*If student is no longer eligible, mark eligibility form "No" and give Written Prior Notice to parents by providing a copy of eligibility determination form.

9

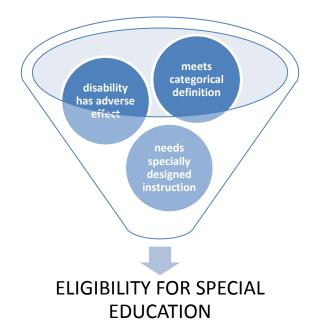
24 August 2012

• Give parent copy of Evaluation Summary/Eligibility Determination & WPN

#### **Eligibility**

Because the IDEA is an entitlement law, an eligibility team (comprised of qualified professionals and the parent) must analyze and discuss the evaluation data and determine whether the student meets all three criteria for eligibility for special education or special education and related services:

- 1. Does the student meet the definition of one or more of the thirteen categories of disability in the USBE SER?
- 2. Does the disability have an adverse impact on the student's educational performance?
- 3. Does the student require special education (specially designed instruction) to access and make progress in the general curriculum?



If the student meets all three criteria, the team may decide that the student is eligible for special education or special education and related services and identify the primary disabling condition.

Utah defines 13 categories of disability. The USBE SER II.J.1–13 describes the evaluation requirements and criteria for each category of disability.

- 1. Autism
- 2. Deafblindness
- 3. Developmental Delay
- 4. Emotional Disturbance
- 5. Hearing Impairment/Deafness
- 6. Intellectual Disability
- 7. Multiple Disabilities
- 8. Orthopedic Impairment
- 9. Other Health Impairment

- 10. Specific Learning Disabilities
- 11. Speech/Language Impairment
- 12. Traumatic Brain Injury
- 13. Visual Impairment (including Blindness)

#### Individualized Education Program (IEP) Development and Revision

After a student's eligibility for special education or special education and related services has been initially determined, the LEA will hold an IEP meeting within 30 calendar days. The IEP is the educational plan for the student for one year starting from the date of development.

#### IEP Contents

- Present Level of Academic Achievement and Functional Performance (PLAAFP)
- Measurable Annual Goals (objectives if appropriate)
- How progress will be measured
- When progress will be reported to parents
- Extended School Year
- Special Factors
- Statewide and District/Schoolwide Assessment
- Special Education or Special Education and Related Services
  - o Type
  - Amount
  - Frequency
- Supplementary aids and services provided to the student and program modifications or supports for school personnel provided to enable student to advance on IEP goals and be involved in and make progress in general education curriculum

#### **IEP Development Checklist**

Determine annual review date

•Identify who needed Team members are (related service providers?)

2

1

• Gather existing data on academic and social performance from general education teachers, progress on IEP goals, other school tests

3

- Draft IEP with PLAAFP and goals (NO SERVICES)
- •Contact parent and Team members for mutually agreeable time for meeting

4

- •Send draft IEP to parent and other IEP Team members
- Ask Team members to send in or bring suggestions to meeting

5

- •Send Notice of Meeting to all Team members
- •Indicate all purposes of meeting (IEP review, placement review, etc.)

6

- Hold IEP Team meeting
- •Keep notes/minutes of meeting

. 7

- •Make changes team members suggest, if appropriate
- Ask parent for any additional input

8

- •Complete IEP document
- •Team members sign to show participation

9

•Give parent copy of IEP, WPN of IEP, and placement implementation

#### Related Services

The IDEA defines related services as "transportation and such developmental, corrective, and other supportive services as are required to assist a student with disabilities to benefit from special education." Related services include, but are not limited to, the following:

- Transportation
- Speech-language pathology and audiology services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Recreation, including therapeutic recreation
- Early identification and assessment of disabilities in students
- Counseling services, including rehabilitation counseling
- Orientation and mobility services
- Medical services for diagnostic or evaluation purposes
- School health services
- School nurse services
- Social work services in schools
- Parent counseling and training

#### **Transportation**

In general, charter schools are not required to provide transportation for students to and from school. However, if transportation as a related service is included in the IEP of a student with a disability, the charter school must provide it. Transportation as a related service may be provided in a variety of ways: by school bus or school car, by parents who are reimbursed mileage for two round trips daily, by taxi, by public transit systems, and others. Regardless of the method, the charter school is responsible for the costs of transportation as a related service.

Transportation as a related service includes transportation needed to be involved in and make progress in the general curriculum and to participate in extracurricular and other non-academic activities. This means that if the seventh grade is going to the opera, the seventh grade student with disabilities who travels in a wheelchair must be transported to the activity with the student's nondisabled peers.

#### **Special Education Staff**

Special education teachers and related service providers working in charter schools must have licenses through the USOE. The Highly Qualified Teacher (HQT) requirements of NCLB also apply. Complete information about these requirements for special education teachers in elementary and secondary public schools is found at <a href="http://www.schools.utah.gov/cert/">http://www.schools.utah.gov/cert/</a>.

# **Frequently Asked Questions and Answers**

# 1. What is the school's philosophical orientation toward serving students with disabilities?

By their very nature, charter schools have a particular orientation toward the delivery of education services that may be manifested in a specific curriculum, neighborhood, or parent focus. Before opening, charter school personnel must ask themselves how they intend to serve students with disabilities. Laws protecting the rights of students with disabilities do not prescribe a particular delivery model or methodology. However, one critical component of the delivery model often is the extent to which the charter school believes it can implement a "full inclusion" model.

While the IDEA expresses a preference for a student with disabilities to be served in the regular education classroom to the maximum extent appropriate to meet the student's needs and enable him/her to make progress toward the IEP goals and progress in the general curriculum, the key word is *appropriate*. Placement decisions about where specialized instruction will be delivered are based on the unique needs of each individual student with disabilities. Some students may be able to receive a FAPE and make progress with special education provided in the regular classroom, usually by special education staff who "push in" the services. Many students with disabilities will be able to progress with a combination of services in the regular education classroom and "itinerant services," which are often provided in a "pull-out" model.

Students whose needs in the areas of curriculum changes, instructional adaptations, and/or behavioral interventions are very involved may not be able to make progress with services delivered in whole or part in the regular education classroom. Charter schools must be prepared for the full range of placement options so that individual needs of students with disabilities can be addressed appropriately.

#### 2. Who will provide special education and related services?

The IDEA specifies that qualified personnel may deliver special education services, and this includes properly trained and properly supervised paraprofessionals. The charter school must determine what personnel will be hired to provide and supervise special education programs in the school. Most charter schools in Utah have one or more licensed special education teachers, holding special education Mild/Moderate licenses or endorsements. A dual certification in Mild/Moderate and Severe special education is ideal, and supports the full range of alternate placement options requirement of the IDEA. If the school decides to use paraprofessionals to assist in the delivery of specialized instruction, they should take seriously the terms "properly trained" and "properly supervised." Paraprofessionals need training in delivering specialized instruction generally, as well as training in the specifics of the IEPs and BIPS (if any) for students with whom they are assigned to work. A basic working knowledge of the IDEA and USBE SER is also useful and may prevent problems.

A regular education teacher may also provide some of the specialized instruction a student needs as described in the IEP. For example, a teacher might work with a student with disabilities in a special group within the regular classroom for part of a

literacy block. When a student with disabilities is involved in the instruction given to all students, that instruction would not meet the criteria for specially designed instruction, nor would it be counted as special education time. The regular education teacher is also accountable for providing accommodations or program modifications listed in an IEP during regular classroom instructional time.

The charter school must also make a plan for how it will provide related services to students as described in an IEP. Contracting or hiring a speech-language pathologist, occupational and physical therapists, counselors, and other providers must be considered. Some students may enter the charter school with such related services already on their IEPs, and comparable services must be provided. When the IEP Team meets to review and revise an IEP, the charter school must ensure that related services are not removed due to administrative convenience or difficulty in locating appropriately licensed related service providers. This would be grounds for a parent to access dispute resolution procedures.

An important aspect of special education is evaluation to determine eligibility for special education or special education and related services and to identify the student's needs. Charter school personnel need to consider who will conduct individually administered norm-referenced assessments, as well as the availability of testing materials.

# 3. Do charter schools have to hire or contract with licensed special educators?

Yes. Special education teachers must have valid licenses as special education teachers in Utah. In addition, the IDEA 2004 requires that special education teachers meet the "highly qualified" standards of No Child Left Behind (NCLB). Related service providers must also meet standards for their professions, as per USBE SER IX.H.

4. With the current shortage of special education teachers and related service providers in Utah, what strategies can charter schools use to hire or contract with teachers and related service professionals?

Charter schools can use creative strategies to access licensed special education and related services professionals. Some strategies charter schools often use are:

- Hiring faculty with dual licensure (elementary education and special education).
- Hiring consultants to provide special education services.
- Hiring retired teachers or part-time staff members.
- Developing collaborative agreements with school districts.
- Developing collaborative agreements with other charter schools to share personnel.
- Asking other charter schools how they have located appropriately qualified personnel, especially related service providers.
- Establishing relationships with institutions of higher education that provide preservice training for special educators.

# 5. What steps must charter schools take to ensure that appropriate services are available for students with low-incidence disabilities?

Some students with disabilities that are considered low incidence may enroll in the charter school. Providing services for these individuals with deafness, blindness, autism, orthopedic impairment, and other disabilities may be challenging. Students with hearing and vision impairments are entitled to consultation and sometimes direct services from professionals from the Utah Schools for the Deaf and Blind (USDB). The charter school should contact USDB to have them attend an IEP meeting for those students. Regardless of the type or severity of the disabling condition, these students must be provided with a free appropriate public education by the charter school.

# 6. Can charter schools receive a waiver for certain special education requirements?

The answer is "no." States cannot waive Federal special education laws.

# 7. What if the charter school believes that it is not an appropriate school for a particular student with disabilities to attend?

The charter school is accountable for providing a free appropriate public education to all students with disabilities who are enrolled.

# 8. Can a charter school "counsel-out" a student with a disability?

No. Charter schools are public schools and as such are not allowed to discriminate against students with disabilities. They are legally required to maintain open enrollment policies. Counseling-out is the process of subtly, or not-so-subtly, counseling a student with disabilities or the student's parents to influence an enrollment decision inappropriately based on the student's disability or needs arising from that disability. Advising a student with disabilities or the student's parents that the student is not allowed to enroll, or that the charter school cannot provide the modifications, accommodations, or services necessary for him to attend, is discriminatory. The U. S. Department of Education Office for Civil Rights (OCR) is charged with investigating issues raised about discrimination against students with disabilities.

#### 9. What does it mean to have the capacity to provide special education services?

Special education capacity entails having the human, fiscal, and legal resources required to fulfill the responsibilities articulated in the IDEA. At a minimum, capacity includes the ability to implement existing IEPs, refer students suspected of having eligible disabilities to special education, conduct evaluations, develop IEPs, and provide special education and related services for all entitled students enrolled at the school. This may involve securing some services from an outside source.

Capacity is particularly challenging for virtual schools because all services must be available, and students and practitioners are not situated in the same location. For

example, for a student whose IEP specifies physical therapy, speech, or another related service, the virtual school must provide the service, which could be delivered by itinerant specialists in the student's home, or the student may be transported to a location where the service is available.

# 10. When does a charter school need to have the capacity to provide special education services and comply with Federal and State laws?

Charter schools need to have the capacity to meet their legal responsibility for special education and comply with Federal and State laws **on the first day they open** and thereafter for as long as they operate.

# 11. What are examples of appropriate classroom adaptations, accommodations, and modifications for students with disabilities a charter school should be implementing?

Classroom adaptations, accommodations, and modifications that enable a student with disabilities to access and progress in the general curriculum include, but are not limited to:

- Changing the manner in which the material is presented.
- Adapting the manner in which the student responds to the material.
- Creating personalized study guides.
- Adapting textbooks.
- Arranging the classroom environment to enhance student learning.
- Altering task requirements in amount and type.
- Selecting an alternate task for a classroom assignment.
- Managing classroom behavior effectively.
- Promoting social acceptance.
- Using assistive technology devices.

More information on classroom adaptations, accommodations, and modifications is available from the National Information Center for Children and Youth with Disabilities (NICHY). See resources below (page 31).

# 12. Can a charter school's curriculum alone meet the needs of students with disabilities?

The core tenet of the IDEA is that students are treated as individuals with unique abilities and needs that must be addressed by providing individualized support services as described in the IEP. In order to determine eligibility for special education, the eligibility team must decide that the student requires specially designed instruction in order to make progress on IEP goals and to access and progress in the general curriculum. Specially designed instruction means that changes are made in the content, methodology, or delivery of instruction in order to meet the unique needs of the student

that result from the student's disability. This implies that the standard curriculum would not be able to meet the needs of students with disabilities.

## 13. What NCLB assessment requirements pertain to students with disabilities in charter schools?

Charter schools are subject to the same Title I accountability requirements as other public schools in the State, and all charter schools must participate in Utah's State accountability system, Utah's Performance Assessment System for Students (UPASS). The participation of students with disabilities in these assessments is covered in the IDEA and requires the following:

- Students with disabilities must be included in State- and LEA-wide assessment programs with appropriate accommodations if needed.
- Alternate assessment must be provided for those students who cannot participate in State- and LEA-wide assessment programs even with appropriate accommodations.
- The IEP for each student with disabilities will specify how they will participate in State- and LEA-wide assessments.

# 14. Are students with disabilities included in the charter school's adequate yearly progress (AYP) requirements?

Yes. As stated in NCLB, AYP applies the same high standards to all public elementary and secondary schools in the State. The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets.

## 15. When does a charter school have to do vision and hearing screening?

Charter schools, like other LEAs, will want to have a plan for universal vision and hearing screening sometime in the primary grades. Each LEA must have rules as prescribed by the Department of Health for these screenings and others (UCA 53A-11-201). For special education, it is important to rule out vision and hearing impairments that may be the cause of low student performance before deciding a student is a student with disabilities. For students suspected of having emotional disturbance, multiple disabilities, or specific learning disabilities, ruling out vision and hearing problems is a specified evaluation criterion that has to be documented in the eligibility decision.

## Resources

Name	Web address
Americans with Disabilities Act of 1990	http://www.usdoj.gov/crt/ada/adahom1/htm
IDEA 2004 Implementing Regulations	http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C
National Association of Charter School Authorizers (NACSA)	http://www.qualitycharters.org/
National Information Center for Children and Youth with Disabilities (NICCY)	http://www.nichcy.org
OSEP IDEA site (resources and training materials)	http://idea.ed.gov
Primers on Special Education in Charter Schools	http://www.charterschoolcenter.org/resources/ 90%2C145
Section 504 of the Rehabilitation Act of 1973	http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf
U. S. Department of Education Charter Schools Program and Office of Innovation and Improvement	http://www.ed.gov/programs/charter/index.html
Utah Code Annotated	http://www.le.utah.gov/UtahCode/chapter.jsp?code=53A
Utah State Board of Education Special Education Rules	http://www.schools.utah.gov/sars/Laws,-State- Rules-and-Policies/Rules-and- Regulations.aspx
Utah State Office of Education	http://www.schools.utah.gov/

## **Appendix**

## Glossary—Acronyms

Section 504 of the Rehabilitation Act of 1973

ADA Americans with Disabilities Act

ADHD Attention Deficit Hyperactivity Disorder

ASD Autism Spectrum Disorder

ASL American Sign Language

AT Assistive Technology

BIP Behavior Intervention Plan

CAP Corrective Action Plan

CRT Criterion-Referenced Test

ELL English Language Learner

ESY Extended School Year

FAPE Free Appropriate Public Education

FBA Functional Behavior Assessment

FERPA Family Education Rights and Privacy Act

HQT Highly Qualified Teacher

IAES Interim Alternative Education Setting

IDEA Individuals with Disabilities Education Act

IEE Independent Educational Evaluation

IEP Individualized Education Program

ISS In-School Suspension

LEA Local Education Agency (a school district or charter school in Utah)

LRBI Least Restrictive Behavior Interventions

LRE Least Restrictive Environment

MD Manifestation Determination

NCLB No Child Left Behind

NICHY National Information Center for Children and Youth with Disabilities

OCR Office for Civil Rights

OSEP Office of Special Education Programs

OT Occupational Therapy/Therapist

SEA State Education Agency (USOE)

SLP Speech-Language Therapist

TA Technical Assistance

UAA Utah's Alternate Assessment

U-PASS Utah's Performance Assessment System for Students

UPC Utah Parent Center

UPDC Utah Personnel Development Center

USDB Utah Schools for the Deaf and Blind

USOE Utah State Office of Education

WPN Written Prior Notice

## **Glossary—Definitions**

#### Accommodations

Changes in instruction or in the administration of an assessment (such as changes in the setting, scheduling, timing, presentation, format, response, or other factors, including any combination of these), that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations are used for equity, not advantage, and serve to level the playing field. To be appropriate, assessment accommodations must be identified in the student's IEP or Section 504 Plan and used regularly during instruction and classroom assessment. For details, see USOE Special Needs Accommodations Policy at:

http://schools.utah.gov/sars/DOCS/assessment/Special\_Needs\_Accommodations\_ Policy-pdf.aspx

#### Alternate Assessment

An instrument used in gathering information on the standards-based performance and progress of students whose disabilities preclude their valid and reliable participation in general assessments. Alternate assessments measure the performance of a relatively small population of students with significant cognitive disabilities who are unable to participate in the general assessment system with or without accommodations, as determined by the IEP Team.

#### Assessment

The process of collecting information about individuals, groups, or systems that relies upon a number of instruments, one of which may be a test. "Assessment" is a more comprehensive term than "test."

## Assistive Technology Device

Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with disabilities. The term does not include a medical device that is surgically implanted, or the replacement of such a device.

### Assistive Technology Service

Any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. It includes evaluation of a student's needs, purchase of the device, training, and other aspects of the use of the device.

## Free Appropriate Public Education (FAPE)

Special education or special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State; include preschool, elementary school, and/or secondary school education; and are provided in conformity with an individualized education program (IEP).

#### Inclusion

A special education approach that stresses educating students with disabilities in the regular classrooms with nondisabled peers. Inclusion may not be used in lieu of individual IEP Team decisions about appropriate placement for a student with disabilities, considering the full range of alternative placement options.

## Individualized Education Program (IEP)

A written document which outlines the special education program for a student with a disability. This document is developed, reviewed, and revised in an IEP Team meeting at least annually in accordance with IDEA regulations.

## Individuals with Disabilities Education Act (IDEA)

The major Federal law related to special education that provides funding to States and sets specific procedural requirements for the identification, location, evaluation, and provision of FAPE to students with disabilities.

## Least Restrictive Environment (LRE)

The IDEA requires that, to the maximum extent appropriate, local education agencies must educate students with disabilities in the least restrictive environment (that is, the regular education classroom with appropriate aids and supports) along with their non-disabled peers. The IEP Team may determine that a student needs some other arrangement and placement.

## Local Education Agency (LEA)

A public institution—school district or charter school—that has administrative control and direction of one or more public elementary and/or secondary schools. The term includes charter schools that are established as LEAs under State law.

#### Modification

A change to instruction or testing conditions, procedures, and/or formatting so that measurement of the intended construct is no longer valid.

## Office of Special Education Programs (OSEP)

The section of the U.S. Department of Education that is responsible for the implementation of the IDEA. It carries out activities related to State eligibility for IDEA funds and monitoring compliance with IDEA requirements, as well as collecting data to document effectiveness of special education programs.

#### Related Services

Transportation and such developmental, corrective, and other supportive services as are required to assist a student with disabilities to benefit from special education (specially designed instruction).

## **Special Education**

Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with disabilities, including instruction conducted in the classroom, in the home, in hospitals, in institutions, and other settings; related services; travel training; vocational education; and instruction in physical education.

#### Standardized Test

An established procedure that assures that a test is administered with the same directions and under the same conditions (time limits, etc.) and is scored in the same manner for all students to ensure comparability of scores. Standardization allows reliable and valid comparison to be made among students taking the test. The two major types of standardized tests are norm-referenced and criterion-referenced.

## State Education Agency (SEA)

The component of State government primarily responsible for the State supervision of public elementary and secondary schools. In Utah, the SEA is the Utah State Office of Education (USOE).

#### Student with Disabilities

In the IDEA, a student with a disability is defined as a student evaluated in accordance with regulations, having one of the categories of disability, whose disability has an adverse effect on the student's educational performance, and who by reason thereof, needs special education or special education and related services. Under Section 504, a person with a disability is "any person who has a physical or mental impairment which substantially limits one or more major life activities, or has a record of such an impairment, or is regarded as having such an impairment."

### **Transition Services**

Services that promote movement of special education students from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. For each student with disabilities beginning at age 16 (or younger if determined appropriate by the IEP Team) and updated annually, the IEP must contain a statement of the transition services needed by the student that focuses on the student's course of study; considers the student's long-range goals, strengths, preferences, and interests; and includes, if appropriate, a statement of the interagency responsibilities or any needed linkages with other agencies.

## **Charter School Special Education Checklist**

This checklist is a quick way for a new charter school to determine that all major areas of planning for the special education program have been addressed.

<u>Staff</u>

	How many students with disabilities do we estimate our school will enroll?
	How many special education teachers will we need to employ?
	If our special education program model utilizes paraprofessionals, how many special education paraprofessionals will we need to employ?
	What are the implications for salaries and benefits if we hire part-time or full-time paraprofessionals?
	How are we going to provide related services: speech-language, occupational and physical therapy, counseling, etc.?
	How will we obtain these related services and contract with the providers?
Cι	rriculum, Instruction, and Assessment
	What curricula and instruction will our school use in regular education?
	How does our curriculum align with the common core standards, Utah's adopted curriculum for public schools?
	How does our curriculum incorporate the principles of universal design to meet the needs of a wide array of students?
	How will we modify the curriculum and instructional delivery to address the unique needs of students with disabilities?
	What kinds of assistive technology are needed by our students with disabilities?
	How will we include students with disabilities in required State- and school-wide assessments or develop alternate assessments?
Pr	ofessional Development
	How and when will we train general and special education teachers and paraprofessionals to modify/adapt the curriculum and instructional approach for students with disabilities?
	How will we provide teachers with specialized professional development related to their role in educating and including students with disabilities (e.g., Child Find, IEP Team, implementation, evaluation and progress data, etc.)?

## Special Education Program ☐ What will our Child Find and referral process look like? ☐ What will our special education program look like in general? ☐ How will we provide secondary transition services? ☐ Have we planned for the full range of alternative placements, in the event that a student might need a more restrictive placement? ☐ Where will we conduct evaluations? ☐ Where will we conduct eligibility and IEP Team meetings? ☐ Where will we store confidential special education records? Do we have a locked file cabinet? ☐ Where will we provide small group or individual pull-out services, as needed? ☐ Where can related services personnel meet with small groups or individual students? ☐ Are entrances, classrooms, common areas, and restrooms accessible to children (and adults) with disabilities? ☐ Where will we store and administer medications, if needed? ☐ Where will we store supplies and equipment used by students with disabilities (e.g., educational materials, assistive technology, physical mobility, etc.)? ☐ Who will make repairs to the building and the equipment, if needed? ☐ How will our school meet transportation needs of students who need transportation as a related services described on the IEP? ☐ How will we access transportation for a student in a wheelchair, if needed? Administration ☐ Who will administer and supervise the special education program and its personnel? ☐ Who will serve as the LEA representative in IEP Team meetings? ☐ Who will be responsible for collecting, managing, and reporting required data about special education and students with disabilities to the State?

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☐ About how much special education Federal and State funding will we anticipate?

☐ What does our school need to budget for special education during the first year?

needs?

☐ How will we be prepared financially to enroll a student with significant special

## **Annual Special Education Reports**

The following reports are submitted by LEAs to the USOE each year.

## Coordinated Early Intervening Services (CEIS)

CEIS is an option for LEAs to use up to 15% of their IDEA flow-through funding to serve students who are identified as need supplemental instruction but are not identified as having disabilities under the IDEA.

Due: October 1 (Part of UCA)

## Dispute Resolution

This OSEP Table 7 report includes the number of State complaints, mediations, and due process hearings each year and the outcomes of each.

Due: June 30

## Extended Year for Special Educators (EYSE)

In recent years, the Utah Legislature has provided for special educators to be paid for 2-1/2 days beyond their contracts for work on files and other required documentation.

Due: June 30 and October 30

#### High Cost Students

For students whose special education program exceeds an amount determined annually by the USOE, LEAs may be reimbursed for part of these high costs if this report is submitted.

Due: June 30

### IDEA Flow-through Application

This is the annual application and assurances for expenditure of the LEA's flow-through funding.

**Due**: October 1 (Part of UCA)

#### Personnel

This OSEP Table 2 report includes how many full-time equivalent positions each LEA had in the previous year by roles, including special education teachers, related service providers, and paraprofessionals. It requires information about which personnel are highly qualified.

Due: June 30

## <u>Self-Contained and Resource Accounting Management (SCRAM)</u>

Data on each identified student with disabilities, including entry and exit dates of service, category of disability, amount of special education services, and environment of student's education. Changes must be made as appropriate throughout the year for each student.

**Due**: Uploaded monthly in 2012–2013 school year. Keep current.

## **Utah Consolidated Application (UCA)**

The UCA is an application completed by each LEA that addresses all Federal programs, including the IDEA. The UCA includes the annual application for IDEA flow-through funds and the Comprehensive Early Intervening Services Plan (CEIS).

Due: October 1

## UPIPS Program Improvement Plan

Annual report to the USOE on progress on each goal and activity in the LEA's Program Improvement Plan.

Due: June 30

## **In-State Transfer Student Checklist**

Student Name:			C	Grade:		Date	of Birt	h:			
School:				С	Date of Enrollment:						
the FA suc	e State ar PE to the ch time a	nd e e sti s the	nrolls in udent, in e new LE	with a disability with a a new school/LEA, the acluding services compa EA adopts the previousl d USBE SER. (USBE S	LEA sta arable to y held IE	ff, in cons those d P or dev	sultation escribed	with the	parents previous!	must p ly held i	rovide a IEP unti
Student is entering with special education records, including current IE					t IEP.						
	AND THEN		school special	am, including parents, determines that currer education and related s iately adopt and implement 4.	nt IEP ca services);	an be im	plemente	ed as v	vritten (g	goals, p	-
2.	IF	<u>Stu</u>	dent is	entering with special ec	ducation	records,	includin	g currer	nt IEP.		
	AND		receivir	am, including parents, ng school determines the s, special education an	nat curre	nt IEP ca	annot be				
	THEN		Provide	e a FAPE to the studer Notice of Meeting and spossible p 4.		_	-			_	
3.	IF	<u>Stu</u>	dent is	entering without specia	ıl educati	ion recor	ds.				
	AND		' '								
			П	Disability category:  Description of type,	□ AU □ MD amount.	□ OHI	□OI	□ DD □ SLD		□ HI □ VI	□ ID
				services				•			
		_		Date of last eligibility:_ How student participa Progress reports	ted in Sta	atewide a	assessme	ent			
			Attend	ance and disciplinary da	ลเล:						

District/School SpEd 18
City 07.12

**THEN** Provide a FAPE to the student, including comparable services to existing IEP.

## 4. Receiving student special education records.

	Upon receipt of special education records, review file and determine if Step 1 or Step 2 more appropriate and ensure the special education file contains at least minimu requirements:					
<ul><li>☐ Signed parental Consent for Initial Placement</li><li>☐ Current Eligibility Determination with an Evaluation Summary Report</li></ul>						
	Review file with Minimum Contents Checklist and determine what additional data/documentation are needed to correct incomplete or incorrect file contents. Take necessary actions to complete compliant file.					

Note: Experiencing difficulty in obtaining the IEP from the previous LEA does not relieve the current LEA of its obligation to have a current IEP in place for an eligible student.

## **Special Education Minimum File Contents**

Forms/Information	Notes
Record of Access	Labeled with student's name and school.
Student Demographics	Name, school, grade, date of birth, disability category*, ethnicity.
Referral Form (and documentation of pre-referral interventions if required by LEA)	Document referral concerns. (Interventions if related to SLD eligibility method.)
Documentation of student's English proficiency, if Primary Home Language is Other Than English (PHLOTE)	PHLOTE* questions; UALPA/IPT scores; other LEP summary form.
Permission/Consent to Evaluate For initial testing, reevaluation (if more tests ranytime additional assessment is done.	
Review of Existing Data (by evaluation team including parent)	For initial evaluation if appropriate; at least every 3 years for reevaluation.
Notices of Meetings (for past 365 days)	For evaluation/reevaluation, eligibility determination, IEP development and review, placement, other.
Written Prior Notice (WPN)	WPN is required when actions are proposed or refused on evaluation/reevaluation, eligibility determination, IEP review (includes transition by age 16), placement. WPN is embedded in most forms.
Evaluation Team Summary Report & Eligibility Determination Document (the two most recent)	On some forms, the evaluation summary of data is on the eligibility determination document.
Documentation that parents received a copy of Evaluation Summary Report and Eligibility Determination	On some forms, the evaluation summary of data is on the eligibility determination document.
Evaluation tools used to determine eligibility category and student needs	Test protocols, observation forms, parent questionnaire, etc., for most recent evaluation/eligibility.
IEPs (current and one prior)	Include transition planning form, if appropriate; Amendments; Excusals or Attendance Not Needed documentation.
Progress Reports to parents (for past 365 days)	
Documentation that parents received copy of IEP	Often embedded in document.
Behavior Intervention Plan (if any)	Include FBA in assessment tools.
Initial Consent for Placement (and Change of Placement, if any)	Keep in file as long as student has an IEP. Document parents receive a copy.
Procedural Safeguards provided to parent	Documentation that parent has received a copy at least once per year; most forms include this evidence.

<sup>\*</sup>Demographics and PHLOTE questions are usually located on the referral or registration form.

<sup>\*\*</sup>All other documents, including those older than the ones listed above, may be maintained elsewhere in the LEA.

#### **Authorization to Access Confidential Student Records**

The following professional school personnel are authorized to access all student records stored by the school.

Personnel so authorized need not sign the Record of Access form in all special

education records, nor are they required to obtain student or parent permission to review the records.

School Principal/Director
Special Education Director
Special Education Teacher
School Counselor
Related Service Provider (SLP, OT, PT)
School Psychologist
School Nurse
Other (Title)

General education teachers are authorized to examine the records of their own classroom students under the supervision of the Special Education Director/Teacher identified above.

Other (Title)

## Written Prior Notice of Refusal to Take an Action

Studer	nt Name:	Grade:	Date of Birth:					
Schoo	l:	Date of Enrollment:						
То:	То:							
The following action is refused:								
	Identification:							
	Evaluation:							
	Placement:							
	Other elements of FAPE:							
Why action was refused:								
Before refusing to take the action(s), the following alternatives were considered:								
Option	s Considered	Why Rejected						

Evaluation procedures, tests, records, or reports used as a basis for the refused action:

Other factors relevant to the refusal:

#### Written Prior Notice for Free Appropriate Public Education

Written notice must be provided before each proposal to initiate or refusal to initiate or change the identification, evaluation, educational placement of the student, or to provide a Free Appropriate Public Education. The parent(s) of a child with a disability have protection under the Procedural Safeguards of the Individuals with Disability Education Act (IDEA), a copy of which is enclosed with this form. If parent(s) have any questions regarding this Notice or Procedural Safeguards, they should contact the director/principal or the special education teacher at the student's school.

Note: Written Prior Notice for Actions <u>proposed</u> is embedded in all forms documenting actions for which it is required. It is not necessary to use this form in addition.

Copy to parent/adult student and in student file