DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 57

[Docket ID: DOD–2011–OS–0095]

RIN 0790–AI77

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule reissues the current regulations and: Establishes policy, assigns responsibilities, and implements the non-funding and non-reporting provisions in DoD for: Provision of early intervention services (EIS) to infants and toddlers with disabilities and their families, as well as special education and related services to children with disabilities entitled under this part to receive education services from the DoD; implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their families who, but for age, are eligible to be enrolled in DoD schools; provision of a free appropriate public education (FAPE), including special education and related services, for children with disabilities, as specified in their individualized education programs (IEP), who are eligible to enroll in DoD schools; and monitoring of DoD programs providing EIS, and special education and related services for compliance with this part. This rule also establishes a DoD Coordinating Committee to recommend policies and provide compliance oversight for early intervention and special education.

DATES: This rule is effective on July 27, 2015.

FOR FURTHER INFORMATION CONTACT: Ed Tyner, 571–372–5320.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

a. This rule revises the current regulations in 32 CFR part 57 to incorporate the 2004 amendments to the IDEA and establishes other policy and assigns responsibilities to implement the non-funding and non-reporting provisions of Parts B and C of the IDEA. Under 10 U.S.C. 2164(f) and 20 U.S.C. 927(c), DoD implements, within the DoD school system, the Department of Defense Education Activity (DoDEA), the applicable statutory provisions of Parts B and C of the IDEA, other than the funding and reporting provisions. This rule brings the DoD into compliance with the requirements of the non-funding and non-reporting provisions of IDEA by updating and amending the DoD implementation of the IDEA within the DoD school system. The revisions will ensure that eligible children with disabilities are afforded the services and safeguards as required by applicable statutory provisions of IDEA. The IDEA regulations in 34 CFR parts 300 and 303, which apply to States that receive funds from the U.S. Department of Education under IDEA Parts B and C, do not apply to the DoD school systems as DoD does not receive funds under the IDEA. Nothing in the regulations in 32 CFR part 57 would affect the applicability of the U.S. Department of Education's regulations implementing IDEA in 34 CFR parts 300 and 303.

b. The Individuals with Disabilities Education Act (chapter 33 of 20 U.S.C. 1400 *et seq.*) is the final authority for the regulatory changes to the Department of Defense policy (32 CFR part 57) regarding the provision of services to children with disabilities (birth through age 21) in the DoD Domestic Dependent Elementary and Secondary Schools (10 U.S.C. 2164) and the Department of Defense Dependents Education System (20 U.S.C. 921–932).

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule identifies the services and procedural safeguards afforded to DoD dependent infants and toddlers and their families who are eligible for early intervention services under the IDEA and this part; identifies the services and procedural safeguards afforded to DoD dependent children with disabilities age 3–21 (inclusive) who are eligible for a free and appropriate public education under the IDEA and this part; outlines procedures and timelines for the transition of young children from early intervention services to school-based preschool services; identifies the procedures available for resolution of disputes regarding the provision of early intervention services, or special education and related services; establishes early intervention and special education monitoring and reporting requirements; and establishes procedures within the DoD for implementing the applicable statutory provisions of the IDEA and this part.

III. Costs and Benefits

The provision of early intervention and special education, and related services, is funded through Congressional appropriations to the DoD. The Department of Defense Education Activity (DoDEA) and the medical elements of the Military Departments, which are responsible for providing services to children with special needs, receive their funding from DoD. DoDEA funding is in Defense-wide, Operation and Maintenance funds. The cost of the special education program is included in the combined DoDEA/Military Departments cost that is used to operate all parts of the educational program. The approximate cost for the special education program for FY2011 was $107,851,606.94. Total includes cost for personnel (salaries/benefits), contracts, travel, and equipment/supplies.

The approximate cost for the provision of early intervention and related services by the Military Departments is $32,000,000 annually. Total includes cost for personnel, travel, professional development, and materials/supplies.

This rule updates DoD guidance to reflect the current version of the requirements resulting from the non-funding and non-reporting provisions of the IDEA, thereby ensuring that eligible infants and toddlers and children with disabilities, including those of military families, are aware of and provided the services and safeguards required by federal statute. The non-funding and non-reporting provisions of the IDEA are the substantive rights, protections, and procedural safeguards that apply to DoD. These are applicable as opposed to the ''funding'' and ''reporting'' provisions because DoD schools and child development centers do not receive funding from the US Department of Education and therefore, the IDEA statutory reporting and related funding provisions do not apply to DoD.

IV. Retrospective Review

The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

V. Public Comments

The Department of Defense published a proposed rule in the **Federal Register** on December 13, 2013 (78 FR 75998–76027) for a 60-day public comment period. We received seventy comments from different respondents on the proposed rule.

Six of the public comments supported specific provisions of the proposed rule. Three of the respondents approved of the new Administrative Complaint procedures, citing this as an important dispute resolution option for military

families. One person expressed similar support for the mediation process. One commenter validated the importance of ensuring informed parental consent prior to evaluations, and one respondent expressed appreciation for the opportunity for parents of an infant or toddler, especially those new to early intervention, to bring a family member or other individuals to Individualized Family Service Plan (IFSP) meetings.

In reviewing the rule, DoD noted an error with the numbering in § 57.6(b). The regulation skipped from § 57.6(b)(10) to § 57.6(b)(12) and appeared to eliminate § 57.6(b)(11). Section 57.6(b)(11) had been removed and inadvertently the numbering of the remaining sections was not changed. The numbering has been corrected; section titles are: § 57.6(b)(11) Extended School Year (ESY) Services; § 57.6(b)(12) Discipline; § 57.6(b)(13) Children Not Yet Determined Eligible for Special Education; § 57.6(b)(14) Referral to and Action by Law Enforcement and Judicial Authorities; § 57.6(b)(15) Children with Disabilities Who Are Placed in a Non-DoDEA School or Facility Pursuant to an IEP; § 57.6(b)(16) Confidentiality of the Records; § 57.6(b)(17) Parental Consent; § 57.6(b)(18) Parent Revocation of Consent for Continued Special Education and Related Services; and § 57.6(b)(19) Procedural Safeguards.

Two respondents submitted comments regarding the criteria for early intervention eligibility. They noted the variability in criteria used by States and urged DoD to employ generous eligibility criteria. Text was added to § 57.6(a)(4)(ii)(A) to clarify DoD's eligibility criteria of a 25 percent delay. Text now reads, ''The infant or toddler is experiencing a developmental delay in one or more of the following areas: Physical development; cognitive development; communication development; social or emotional development; or adaptive development; as verified by a developmental delay of two standard deviations below the mean as measured by diagnostic instruments and procedures in at least one area; a 25 percent delay in at least one developmental area on assessment instruments that yield scores in months; a developmental delay of 1.5 standard deviations below the mean as measured by diagnostic instruments and procedures in two or more areas; or a 20 percent delay in two or more developmental areas on assessment instruments that yield scores in months.'' Additionally, § 57.6(a)(4)(ii)(B) was modified to clarify the conditions under which an infant or toddler may be ''at-risk'' for a developmental delay and therefore eligible for services. Section 57.6(a)(4)(ii)(B) now reads, ''The infant or toddler has a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; moderate to severe sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.''

Several comments were received regarding assessments and evaluations of infants and toddlers. One commenter provided suggestions for implementation, which did not call for modification of the proposed rule. Another commenter expressed concern that the proposed § 57.6(a)(3) did not appear to require the identification of the services and supports needed to enhance a family's capacity to meet an infant or toddlers' developmental needs. We agree that clarification of the need for identification of family services and supports is appropriate. Text was added to § 57.6(a)(3)(ii)(B)(*4*) to read, ''Incorporate the family's description of its resources, priorities, and concerns related to enhancing the infant's or toddler's development and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler.''

Several respondents suggested that the regulation should more clearly explain that comparable services for transferring students should include extended year services (ESY) if such services were included on the child's IEP when transitioning to a new school. We agree and appreciate the reference to the model provided by the Department of Education in its July 19, 2013 Letter to the State Directors of Special Education on this point. Section 57.6(b)(3)(i)(B) has been modified to read, ''Provide FAPE, including services comparable (*i.e.,* similar or equivalent) to those described in the incoming IEP, which could include extended school year services, in consultation with the parents, until the CSC.''

One commenter addressed the need for parental support during the child's transition from Early Intervention Services (EIS), and recommended DoD adopt requirements parallel to those set forth for state schools in the Department of Education's regulation. We agree that parents would benefit from being informed, in the final Individualized Family Service Plan (IFSP), of the steps required by the early intervention provider when transitioning a child out of the program. For clarity, § 57.6(a)(7) has been retitled ''Transition from Early Intervention Services'' and clarifying text has been added at the end of (7)(i) to better ensure that such supportive steps are taken to facilitate the parents' participation and the child's transition from EIS to preschool or other environments. The text now reads, ''EDIS shall provide a written transition plan for toddlers receiving EIS to facilitate their transition to preschool or other setting, if appropriate. A transition plan must be recorded on the IFSP between the toddler's second and third birthday and not later than 90 days before the toddler's third birthday and shall include the following steps to be taken: (A) A plan for discussions with, and training of, parents, as appropriate, regarding future transition from early intervention services, and for obtaining parental consent to facilitate release of toddler records in order to meet child-find requirements of DoDEA, and to ensure smooth transition of services; (B) The specific steps to be taken to help the toddler adjust to, and function in, the preschool or other setting and changes in service delivery; (C) The procedures for providing notice of the transition to the DoDEA CSC, for setting a pre-transition meeting with the CSC (with notice to parents), and for confirmation that child-find information, early intervention assessment reports, the IFSP, and relevant supporting documentation are transmitted to the DoDEA CSC; (D) Identification of transition services or other activities that the IFSP team determines are necessary to support the transition of the child.''

Several comments were submitted regarding the proposed rule's provisions regarding requests for evaluation and eligibility determination. One commenter argued that requiring a parent to submit ''a written request for an evaluation'' was inconsistent with IDEA and urged that an oral request should be sufficient to trigger a referral and, as appropriate, further evaluation. A second comment from the same source recommended the addition of language requiring ''reasonable efforts'' to obtain consent to an evaluation. Another commenter recommended specific language requiring the eligibility review team to review parent-provided information. As to the first comment, IDEA does not specify the medium or manner of request for an evaluation. We believe that a written

request encourages clarity of expectations and provides an important procedural record. However, this comment has highlighted the fact that the regulation would benefit from language specifying responsibilities for ensuring the request is committed to writing. We concur with the second and third proposed clarifications. § 57.6(b)(4) has been modified to read, ''A parent may submit a request for an evaluation if they suspect their child has a disability. The CSC shall ensure any such request is placed in writing and signed by the requesting parent and shall, within 15 school days, review the request and any information provided by the parents regarding their concerns, confer with the child's teachers, and gather information related to the educational concerns. Following a review of the information, the CSC shall:'' Section 57.6(b)(6) was modified to include § 57.6(b)(6)(i)(D) with the requirement that the school ''Make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.''

One comment was addressed to the use of pre-referral services and the language of § 57.6(b)(5). The commenter recommended that the regulation include additional language regarding the use of pre-referral interventions, including a specific mandate that the use of such services should not be used to delay provision of ''IDEA services.'' Pre-referral services are intended, in the context of the reauthorized IDEA, for students in kindergarten through grade 12 who are not currently identified as needing special education and related services, but who need additional academic and behavioral support to succeed in the general education environment. Pre-referral activities as implemented in DoDEA are designed to assist a student who is demonstrating learning and/or behavioral difficulties in the general education classroom. The pre-referral process is not used to limit FAPE, but is a collaborative effort by the child's teacher and appropriate school personnel to help improve a student's performance by using targeted, research-based interventions. We agree that the language of § 57.6(b)(5) could be modified to address the requirements of this process more clearly. § 57.6(b)(5)(i) has been modified to clarify that prior to referring a child who is struggling academically or behaviorally to the CSC for assessment and evaluation and development of an IEP, the teacher shall identify the child's areas of specific instructional need and target instructional interventions to those needs as soon as the areas of need become apparent. We also added language requiring those interventions to use scientific, research-based interventions. Throughout the pre-referral process, the teachers confer with the parents to ensure their awareness of the concern and planned interventions, and that parents are informed of the child's progress. Therefore, we do not believe inclusion of an additional notice requirement is necessary.

One commenter provided multiple comments regarding the rights of parental participation in IEP meetings. The first comment urged that expanded language about parental participation in meetings should be added to the regulation at § 57.6(b)(1). The commenter also suggested that notice of the IDEA procedural safeguards be made available on the DoDEA Web site. That commenter also suggested modification of the language of § 57.6(b)(8)(ii) to make it clear that parents can bring persons with expertise regarding the IDEA, *e.g.*, parent advocates, to CSC meetings. We do not agree that additional detail regarding specific procedures for parent participation needs to be added to the regulation. The procedures for notifying parents of meetings, scheduling at a mutually convenient time, and maintaining a record of the meeting, as well as guidelines if a parent is unable to attend a meeting, are included in the DoDEA Special Education Procedural Guide. The Guide is available online at *http://www.dodea.edu/Curriculum/specialEduc/upload/SPEDproceduralGuide.pdf.* The handbook, ''Parents Rights for Special Education-Notice of Procedural Safeguards,'' is already on the DoDEA Web site, together with other information accessible at *http://www.dodea.edu/Curriculum/specialEduc/parentsInfo.cfm.* We agree with the suggested addition to § 57.6(b)(8)(ii) and text has been modified to ensure parents understand they can invite an individual with special knowledge and expertise in the IDEA and its procedures to attend CSC meetings.

A number of comments were received regarding assessment and evaluation of school-aged children. One commenter recommended that § 57.6(b)(6) should be revised to require that a professional from each suspected disability area should be part of the evaluation team. A second commenter recommended addition to § 57.6(b)(6), assessment of the nature and level of communication functioning, because communication is affected by many disabilities. That same commenter also urged that § 57.6(b)(6) should include not only academic needs, but functional performance needs, which would be more consistent with a broader understanding of educational needs. We agree with these three recommendations and the broader focus of educational needs intended to be identified in a child's assessment and evaluation. The final rule, at § 57.6(b)(6)(iv) has been revised to require ''At least one specialist with knowledge in each area of the suspected disability shall be a member of the multidisciplinary assessment team'' and § 57.6(b)(7)(i)(A) modified to ''Require that the full comprehensive evaluation of the child is accomplished by a multidisciplinary team including specialists with knowledge in each area of the suspected disability and shall receive input from the child's parent(s).'' At § 57.6(b)(6)(ii)(D)(*1*) the rule was revised to include assessment of the nature and level of communication functioning. In addition § 57.6(b)(6)(xi)(B) was revised to include not only academic needs, but related developmental and functional needs, as well. The content sought by the fourth recommendation is already addressed in § 57.6(b)(6)(ix) and (x).

Two commenters asked for text clarifying the membership of parents and special education teachers and providers on the IEP team (DoDEA's CSC). We do not disagree that § 57.6(b)(8)(ii)(B) would benefit from these changes. We note, however, that ''parent'' in the DoD system is defined elsewhere in the regulation. In conformity with 20 U.S.C. 1414, § 57.6(b)(8)(ii)(B)(*3*) has been revised to read, ''Not less than one special education teacher or, where appropriate, not less than one special education provider of such child,'' and the exact language of the IDEA, ''the child's parents,'' now replaces the phrase ''one or both of the child's parents'' used in the proposed rule at § 57.6(b)(8)(ii)(B)(*4*).

One commenter suggested amendment of § 57.6(b)(8)(iii) to require a description of short-term objectives or benchmarks for all children, including those who take alternate assessments as required by 20 U.S.C. 1414(d)(1)(A)(i)(I)(cc). For students taking an alternate assessment aligned to alternate standards, IDEA requires a description of benchmarks or short-term objectives. DoDEA IEPs have always contained long-term goals and short-term objectives. Including short-term objectives under long-term annual goals enables DoDEA to track and substantiate student progress. To reinforce this requirement, ''For children with disabilities who take an alternate

assessment, a description of short-term objectives,'' was added at § 57.6(b)(8)(iii)(A)(*3*).

One commenter expressed concern that the proposed rule used language inconsistent with 20 U.S.C. 1415(k)(1)(B) when establishing criteria for disciplinary removals and use of the Alternate Educational Setting (AES). While we did not concur with all the concerns of this commenter, we appreciate the commenter's attention to detail and recognize that the terminology used resulted in a gap in the regulation for what would happen on the 10th day of a child's removal from the school, as well as a lack of clarity as to the entity empowered to determine an AES and other aspects of the disciplinary procedures identified in IDEA. Section 57.6(b)(12)(ii)(B) was modified by replacing the phase ''less than'' with ''not more than.'' Other changes to § 57.6(b)(12)(iii) were made to better conform to 20 U.S.C. 1414(k), clarify the circumstances in which an AES must be determined by the CSC, and reconcile various provisions of the regulation. The title at § 57.6(b)(12)(v) was modified to reduce confusion as to what constitutes the ''manifestation determination'' itself, and what actions follow thereafter. Section 57.6(b)(12)(iii)(A) was modified and now reads, ''To an appropriate interim alternate educational setting (AES), another setting, or suspension for not more than 10 consecutive school days to the extent those alternatives are applied to children without disabilities (for example, removing the child from the classroom to the school library, to a different classroom, or to the child's home), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as the CSC has determined that those removals do not constitute a pattern in accordance with paragraphs (b)(12)(ii) and (b)(12)(iv)(C) of this section.'' Additionally, the phrase, ''To an AES determined by the CSC'' was inserted at the beginning of § 57.6(b)(12)(iii)(B), and a new § 57.6(b)(12)(iii)(C) was added. Section 57.6(b)(12)(iii)(C) reads, ''To an AES determined by the CSC, another setting, or suspension for more than 10 school days where the behavior giving rise to the violation was determined by the CSC not to be a manifestation of the child's disability, in accordance with paragraph (b)(12)(v) of this section.'' We also added clarifying language ''to address the school's failure to implement the IEP'' to § 57.6(b)(12)(v)(B)(*2*)(*iii*) and revised § 57.6(b)(12)(v)(B)(*5*)(*ii*) to read, ''Reconvene the CSC following a disciplinary decision that would change the student's placement, to identify, if appropriate, an educational setting and delivery system to ensure the child receives services in accordance with the IEP.''

Four comments were received regarding a parent's right to Prior Written Notice, each expressing concern that important language from the IDEA was not included in this implementing regulation. We agree that the regulation should more clearly demonstrate consistency with the IDEA. To better conform to 20 U.S.C. 1415, changes were made to § 57.6(b)(19)(i)(D): Deleting the phrase ''be in sufficient detail to inform the parents about'' from § 57.6(b)(19)(i)(D)(*1*), and adding § 57.6(b)(19)(i)(D)(*1*)(*iii*) stating the specific requirement for provision of ''a description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action.'' The paragraphs were also reordered for increased clarity. A proposed modification to § 57.6(b)(19)(i)(c)(*1*)(v) was considered unnecessary because the proposed rule already requires all procedural safeguards be set forth in the Prior Written Notice.

While IDEA requires mediation to be confidential, one respondent expressed concern about the proposed text at § 57.6(d)(4)(vii)(D) prohibiting the recording of a mediation session and removal of notes from the room. The respondent noted that the statute does not include such language and that, in situations where both parents are unable to participate in the mediation session, depriving a parent of the ability to tape or take notes would impact the parent's ability to discuss the session with the parent absent from the session. In response to the comment, at the proposed rule § 57.6(d)(4)(vii)(D), the text reading, ''Unless the parties and the mediator agree, no person may record a mediation session, nor shall any written notes be taken from the room by either party,'' was deleted. To further clarify the issue, the provision regarding a confidentiality, § 57.6(d)(4)(ix)(C) became: ''Discussions and statements made during the mediation process, and any minutes, statements or other records of a mediation session other than a final executed mediation agreement, shall be considered confidential between the parties to that mediation and are not discoverable or admissible, consistent with the IDEA, in a subsequent due process proceeding, appeal proceeding, or civil proceeding.'' The fact that mediation is confidential is reinforced in § 57.6(d)(4)(ix)(D), which now states, ''Mediation is confidential. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.''

Two commenters addressed the absence of presumed confidentiality for Resolution Meetings. One commenter recommended deleting § 57.6(d)(7)(vii) altogether, asserting that the lack of confidentiality and the discoverability and admissibility at due process hearings and appeals would discourage parties from candid resolution discussions and ''settlement offers.'' A second commenter recommended that the final regulation include a requirement that parents be informed in writing, prior to the resolution session, that discussions were not necessarily confidential. The IDEA treats resolution meeting discussions differently than it does mediation. While 20 U.S.C. 1415 specifically requires confidentiality in the mediation process, Congress did not apply the same confidentiality to resolution meetings. We believe that, had Congress intended confidentiality, they would have attached the same provision to resolution meetings as they did to mediation. We agree that parents should be informed of the lack of presumed confidentiality in Resolution Meetings, but do not agree that this burden falls solely on the school system or that the regulation should add this procedural requirement to the school's obligation. Information about the resolution session is provided in the ''Parents Rights for Special Education-Notice of Procedural Safeguards Handbook'' posted on the DoDEA Web site at *http://www.dodea.edu/Curriculum/specialEduc/upload/parentRights.pdf.*

Comments on § 57.6(d) Alternative Dispute Resolution and Due Process Procedures were submitted by one commenter who expressed concern with the timelines set forth in the proposed rule for dispute resolution procedures—specifically that the typical service member might be reassigned before they could work through the cumulative deadlines for the dispute resolution procedures. We do not believe these provisions require modification. The various avenues of dispute resolution are not intended to be pursued serially. Rather, unless otherwise mandated by the IDEA, these are options which may be pursued in the alternative or, as in the case of mediation and filing due process, concurrently.

Several commenters addressed specific aspects of the due process complaint process. Two commenters expressed concern about the required standard for content of a due process

complaint, noting that the proposed language in § 57.6(d)(5)(vi)(B) would require a greater level of specificity than is required in the IDEA itself. One commenter expressed concern that § 57.6(d)(6)(vi) applied only in response to parental complaints. That commenter also demonstrated confusion regarding the provisions controlling the interplay between filing a Response to the Petition for Due Process and filing a Notice of Insufficiency. We concur with the concerns about the level of specificity and the one-sided language defining which party's due process complaint (petition) can generate a Notice of Insufficiency. We disagree with the commenter's belief that the language regarding the filing a Notice of Insufficiency is otherwise inconsistent with the IDEA. To better conform to the IDEA, § 57.6(d)(5)(vi)(B) and § 57.6(d)(13)(iv) were modified to delete the word ''specifically.'' Section 57.6(d)(5)(vi)(B) now reads, ''A description of the nature of the problem of the child relating to the proposed or refused initiation or change including facts (such as who, what, when, where, how, why of the problem).'' Additionally, § 57.6(d)(5)(vi)(B)(*1*) and (*2*) were deleted, and § 57.6(d)(6)(vi) was modified to read, ''A response to the petitioner under (d)(6)(ii) of this section shall not be construed to preclude the respondent from asserting that the due process complaint was insufficient using the procedures available under (d)(6)(v) of this section.''

One commenter expressed concern about the provisions for discovery, witnesses, and documentary evidence in DoD due process hearings and recommended that these provisions be altered or removed to reduce the burden on parents exercising their right to due process under IDEA. A second commenter expressed concern that proposed § 57.6(d)(13) could unduly burden parents with witness expenses. The discovery, witness and documentary evidence provisions are consistent with other administrative processes, and their value in ensuring a fair and focused due process hearing has been proven by similar provisions contained within prior DoD regulation under IDEA. The proposed revisions are not regarded as necessary or appropriate. As to the payment of witness expenses, the regulation at § 57.6(d)(13)(ix) already assures this concern can be addressed through a request for hearing officer order.

One commenter urged elimination of the provision that an Independent Educational Evaluation (IEE) is required to meet DoDEA agency criteria, arguing that the proposed rule did not apply such criteria to DoDEA. The commenter further asserted that both the requirement to meet such criteria, and any requirements to use Military examiners or other evaluators in a specific geographic area, constituted interference with the independence of the evaluation. The commenter's concern regarding definition of what constitutes DoDEA criteria applicable to the DoDEA schools is valid. Some of the criteria applied to DoDEA needed to be more clearly set out in the regulation itself. We disagree, however, that the agency criteria prevent the parents from obtaining a truly independent evaluation or ''a different evaluation to fully understand the child's disability and how it affects him in school.'' The IDEA, 20 U.S.C. 1415, does not speak to parameters of an IEE. Further, we believe the criteria set forth in § 57.6(b)(19)(iii)(F) are consistent with guidance released to the States by the Department of Education, and that a publicly funded IEE may be required to satisfy the school system's own criteria for evaluations, so long as the parents are afforded an opportunity to demonstrate that under their circumstances, an evaluator who does not meet agency criteria, such as those pertaining to geographical location or qualifications, is required in order to obtain an appropriate evaluation. The provisions regarding DoDEA evaluation criteria at § 57.6(b)(6)(iv) have been clarified and IEE provisions of § 57.6(b)(19)(iii) modified to more clearly cross reference the IEE to parallel DoDEA evaluation criteria.

One commenter took issue with the right to appeal as set forth in § 57.6(d)(17), noting that the majority of states have eliminated this approach and are using a ''single-tier'' approach so that the decision of the Hearing Officer is final unless the losing party wishes to appeal to state or federal court. DoD has not chosen a single-tier approach because we believe the opportunity for appeal has been proven to provide superior protection of the rights of the parties.

One commenter recommended that the rule be revised to include not only an IEP content requirement to set forth how a child's progress towards meeting annual goals will be measured, but to add a description of the extent to which the child's progress is sufficient to enable the child to achieve his goals by the end of the school year. The commenter was particularly focused on helping the parent to know whether the child would be at grade level. DoD respectfully declines the recommendation. We do not believe that requiring additional IEP content not specified by the IDEA is appropriate, nor is a requirement that progress be measured by whether the child achieves grade level consistent with the law that has developed under the IDEA regarding measurement of progress.

Several respondents submitted comments about specific definitions in the proposed rule at § 57.3. After our review of the comments, a number of the definitions were modified for greater clarity. The revised definitions are as follows:

(1) Alternate Assessment. ''An objective and consistent process that validly measures the performance of students with disabilities unable to participate, even with appropriate accommodations provided as necessary and as determined by their respective CSC, in a system-wide assessment.''

(2) Alternative Educational Setting (AES). ''A temporary setting in or out of the school, other than the setting normally attended by the student (*e.g.,* alternative classroom, home setting, installation library) as determined by school authorities or by the CSC in accordance with § 57.6(b)(12) as the appropriate learning environment for a student because of a violation of school rules and regulations or disruption of regular classroom activities.''

(3) Developmental Delay. ''Developmental Delay in children ages 3 through 7. A child three through seven (or any subset of that age range, including ages 3 through 5) who is experiencing developmental delays, as defined for infants and toddlers at § 57.6(a)(4)(ii)(A) as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who, by reason thereof, needs special education and related services. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.''

(4) Manifestation Determination. ''The process in which the CSC reviews all relevant information and the relationship between the child's disability and the child's behavior to determine whether the behavior is a manifestation of the child's disability.''

(5) Related Services. ''Transportation and such developmental, corrective, and other supportive services, as required, to assist a child with a disability to benefit from special education under the child's IEP. The term includes services or consults in the areas of speech-language pathology; audiology services; interpreting services; psychological

services; physical and occupational therapy; recreation including therapeutic recreation; social work services; and school nurse services designed to enable a child with a disability to receive a FAPE as described in the child's IEP; early identification and assessment of disabilities in children; counseling services including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluative purposes. The term does not include a medical device that is surgically implanted or the replacement of such.''

(6) Related Services Assigned to the Military Departments. ''In the overseas areas, related services provided by the Military Departments include medical and psychological services, audiology, and optometry for diagnostic or evaluative purposes, including consults, to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive special services; and occupational therapy and physical therapy. In the overseas and domestic areas, transportation is provided as a related service by the Military Department when transportation is prescribed in an IFSP for an infant or toddler, birth to 3 years of age, with disabilities.''

(7) Serious Bodily Injury. ''A bodily injury, which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.''

(8) Transition Services. ''A coordinated set of activities for a child with a disability that 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 post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.''

DoD disagreed with the recommended revision of the definition of ''Children with Disabilities.'' Infants and toddlers should not be included in the § 57.3 definition because the phrase ''infants and toddlers with disabilities'' is already defined separately. Therefore, the definition properly cross-references 20 U.S.C. 1401(3) which defines a ''child with a disability'' as meaning a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; who, by reason thereof, needs special education and related services.

Several comments were received regarding the definitions of the types of disabilities at § 57.6(g). Based on a review of these comments, several provisions were modified.

(1) Title changed: ''Types of Disabilities in Children 3 through 21. A child may be eligible for services under paragraph (b) if by reason of one of the following disabilities the child needs special education and related services.''

(2) Deaf-Blindness. ''A combination of hearing and visual impairments causing such severe communication, developmental, and educational needs that the child cannot be accommodated in programs specifically for children with deafness or children with blindness.''

(3) Developmental Delay. ''A significant discrepancy, as defined and measured in accordance with (a)(4)(ii)(A) and confirmed by clinical observation and judgment, in the actual functioning of a child, birth through age 7, or any subset of that age range including ages 3 through 5, when compared with the functioning of a non-disabled child of the same chronological age in any of the following developmental areas: Physical, cognitive, communication, social or emotional, or adaptive development. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.'' The criteria for determining a significant discrepancy and high probability for a developmental delay were deleted from the definition.

(4) Specific Learning Disability. ''A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as, recognizing that they may have been otherwise labeled with terms such as, perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. This term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic differences.''

(5) Speech or Language Impairments. ''A communication disorder such as stuttering; impaired articulation; limited, impaired or delayed capacity to use expressive and/or receptive language; or a voice impairment that adversely affects a child's educational performance.'' Subcategories, which are defined in the DoDEA Special Education Procedural Guide, were deleted.

DoD also recognizes that a child may be eligible for services under paragraph (b) if they demonstrate ''Multiple Disabilities'' which DoD defines as ''Concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness, which is set forth as its own type of disability at § 57.6(g)(3).''

General Comment: A respondent proposed that text be added in § 57.6(b)(2) when establishing workload standards that take into account the range of direct and indirect activities that impact the service provider's time. This recommendation was accepted, and the text was modified to read, ''Oversee development of provider workload standards and performance levels to determine staffing requirements for EIS and related services. The standards shall take into account the provider's training needs, the requirements of this part, and the additional time required to provide EIS and related services in schools and natural environments, and for the coordination with other DoD components and other service providers, indirect services including analysis of data, development of the IFSP, transition planning, and designing interventions and accommodations.''

As clarification, due to the division of responsibilities for the provision of IDEA services to children with disabilities, the rule is written to cover services for children birth through 21. In DoD, the responsibility for the provision of IDEA services is shared between the Military Departments and DoDEA. The Military Departments are assigned responsibility for providing early

intervention services (§ 57.6(a)) at locations in the United States and overseas. The Military Departments are also responsible for the provision of certain educationally based related services to children attending a DoDEA school overseas (§ 57.6(c)). DoDEA is responsible for special education services and certain related services for children age 3 through 21, inclusive, as described in (§ 57.6(b)).

VI. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This final rule imposes reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by OMB and assigned OMB Control Number 0704–0411, ''Exceptional Family Member Program.''

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is revised to read as follows:

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS

Sec.

57.1 Purpose.
57.2 Applicability.
57.3 Definitions.
57.4 Policy.
57.5 Responsibilities.
57.6 Procedures.

Authority: 10 U.S.C. 2164, 20 U.S.C. 921–932 and chapter 33.

§ 57.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities to implement, other than the funding and reporting provisions, chapter 33 of 20 U.S.C. (also known and hereinafter referred to in this part as ''Individuals with Disabilities Education Act (IDEA)'') pursuant to 20 U.S.C. 927(c) and 10 U.S.C. 2164(f) for:

(1) Provision of early intervention services (EIS) to infants and toddlers with disabilities and their families, as well as special education and related services to children with disabilities entitled under this part to receive education services from the DoD in accordance with 20 U.S.C. 921–932, 10 U.S.C. 2164, and DoD Directive 1342.20, ''Department of Defense Education Activity (DoDEA)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134220p.pdf*), and the IDEA.

(2) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their DoD civilian-employed and military families.

(3) Provision of a free appropriate public education (FAPE), including special education and related services for children with disabilities who are eligible to enroll in DoDEA schools, as specified in their respective individualized education programs (IEP).

(4) Monitoring of DoD programs providing EIS, or special education and related services for compliance with this part.

(b) Establishes a DoD Coordinating Committee to recommend policies and provide compliance oversight for early intervention and special education.

(c) Authorizes the issuance of other guidance as necessary.

§ 57.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (hereinafter referred to collectively as the ''DoD Components'').

(b) Eligible infants, toddlers, and children receiving or entitled to receive early intervention services (EIS) or special education and related services from the DoD, whose parents have not elected voluntary enrollment in a non-Department of Defense Education Activity (DoDEA) school.

(c) All schools operated under the oversight of the DoDEA, including:

(1) Domestic Dependent Elementary and Secondary Schools (DDESS) operated by the DoD pursuant to 10 U.S.C. 2164.

(2) Department of Defense Dependents Schools (DoDDS) operated by the DoD pursuant to 20 U.S.C. 921–932 (hereinafter referred to as ''overseas'' schools).

(d) Does not create any substantive rights or remedies not otherwise authorized by the IDEA or other relevant law; and may not be relied upon by any person, organization, or other entity to allege a denial of substantive rights or remedies not otherwise authorized by the IDEA or other relevant law.

§ 57.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Age of majority. The age when a person acquires the rights and responsibilities of being an adult. For purposes of this part, a child attains majority at age 18, unless the child has been determined by a court of competent jurisdiction to be incompetent, or, if the child has not been determined to be incompetent, he or she is incapable of providing informed consent with respect to his or her educational program.

Alternate assessment. An objective and consistent process that validly measures the performance of students with disabilities unable to participate, even with appropriate accommodations provided as necessary and as determined by their respective CSC, in a system-wide assessment.

Alternative educational setting (AES). A temporary setting in or out of the school, other than the setting normally attended by the student (*e.g.,* alternative classroom, home setting, installation library) as determined by school authorities or the CSC, in accordance with § 57.6(b)(12) as the appropriate learning environment for a student because of a violation of school rules and regulations or disruption of regular classroom activities.

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

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: Evaluating the needs of an individual with a disability, including a functional evaluation in the individual's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs; training or technical assistance for an individual with disabilities or the family of an individual with disabilities; and training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

Case study committee (CSC). A school-level multidisciplinary team, including the child's parents, responsible for making educational decisions concerning a child with a disability.

Child-find. An outreach program used by DoDEA, the Military Departments, and the other DoD Components to locate, identify, and evaluate children from birth to age 21, inclusive, who may require EIS or special education and related services. All children who are eligible to attend a DoD school under 20 U.S.C. 921–932 or 10 U.S.C. 2164 fall within the scope of the DoD child-find responsibilities. Child-find activities include the dissemination of information to Service members, DoD employees, and parents of students eligible to enroll in DoDEA schools; the identification and screening of children; and the use of referral procedures.

Children with disabilities. Children, ages 3 through 21, inclusive, who are entitled to enroll, or are enrolled, in a DoD school in accordance with 20 U.S.C. 921–932 and 10 U.S.C. 2164, have not graduated from high school or completed the General Education Degree, have one or more disabilities in accordance with section 1401(3) of the IDEA, and need and qualify for special education and related services.

Complainant. Person making an administrative complaint.

Comprehensive system of personnel development (CSPD). A system of personnel development that is developed in coordination with the Military Departments and the Director, DoDEA. CSPD is the training of professionals, paraprofessionals, and primary referral source personnel with respect to the basic components of early intervention, special education, and related services. CSPD may also include implementing innovative strategies and activities for the recruitment and retention of personnel providing special education and related services, ensuring that personnel requirements are established and maintaining qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared to provide special education and related services. Training of personnel may include working within the military and with military families, the emotional and social development of children, and transition services from early intervention to preschool and transitions within educational settings and to post-secondary environments.

Consent. The permission obtained from the parent ensuring they are fully informed of all information about the activity for which consent is sought, in his or her native language or in another mode of communication if necessary, and that the parent understands and agrees in writing to the implementation of the activity for which permission is sought.

Continuum of placement options. Instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; includes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Controlled substance. As defined in Sections 801–971 of title 21, United States Code (also known as the ''Controlled Substances Act, as amended'').

Day. A calendar day, unless otherwise indicated as a business day or a school day.

(1) *Business day.* Monday through Friday except for Federal and State holidays.

(2) *School day.* Any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

Department of Defense Education Activity (DoDEA). The Department of Defense Education Activity is a DoD Field Activity under the direction, operation, and control of the Under Secretary of Defense for Personnel & Readiness (USD(P&R)) and the Assistant Secretary of Defense for Readiness & Force Management (ASD(R&FM)). The mission of DoDEA is to provide an exemplary education by effectively and efficiently planning, directing, and overseeing the management, operation, and administration of the DoD Domestic Dependent Elementary and Secondary Schools (DDESS) and the DoD Dependents Schools (DoDDS), which provide instruction from kindergarten through grade 12 to eligible dependents.

Department of Defense Dependents Schools (DoDDS). The overseas schools (kindergarten through grade 12) established in accordance with 20 U.S.C. 921–932.

Department of Defense Education Activity School. A DDESS or DoDDS school operated under the oversight of DoDEA.

Developmental Delay in children ages 3 through 7. A child three through seven

(or any subset of that age range, including ages 3 through 5) who is experiencing developmental delays, as defined for infants and toddlers at § 57.6(a)(4)(ii)(A) as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who, by reason thereof, needs special education and related services. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.

Domestic Dependent Elementary and Secondary Schools (DDESS). The schools (pre-kindergarten through grade 12) established in accordance with 10 U.S.C. 2164.

Early intervention service provider. An individual that provides early intervention services in accordance with this part.

Educational and Developmental Intervention Services (EDIS). Programs operated by the Military Departments to provide EIS to eligible infants and toddlers with disabilities, and related services to eligible children with disabilities in accordance with this part.

EIS. Developmental services for infants and toddlers with disabilities, as defined in this part, that are provided under the supervision of a Military Department, including evaluation, individualized family service plan (IFSP) development and revision, and service coordination, provided at no cost to the child's parents (except for incidental fees also charged to children without disabilities).

Extended school year (ESY) services. Special education and related services that are provided to a child with a disability beyond the normal DoDEA school year, in accordance with the child's IEP, are at no cost to the parents, and meet the standards of the DoDEA school system.

Evaluation. The method used by a multidisciplinary team to conduct and review the assessments of the child and other relevant input to determine whether a child has a disability and a child's initial and continuing need to receive EIS or special education and related services.

Extracurricular and non-academic activities. Services and activities including counseling services; athletics; transportation; health services; recreational activities; special interest groups or clubs sponsored by the DoDEA school system; and referrals to agencies that provide assistance to individuals with disabilities and employment of students, including employment by a public agency and assistance in making outside employment available.

FAPE. Special education and related services that are provided under the general supervision and direction of DoDEA at no cost to parents of a child with a disability, in conformity with an IEP, in accordance with the requirements of the IDEA and DoD guidance.

Functional behavioral assessment. A process for identifying the events that predict and maintain patterns of problem behavior.

General education curriculum. The curriculum adopted by the DoDEA school systems for all children from preschool through secondary school. To the extent applicable to an individual child with a disability, the general education curriculum can be used in any educational environment along a continuum of alternative placements.

IEP. A written document that is developed, reviewed, and revised at a meeting of the CSC, identifying the required components of the individualized education program for a child with a disability.

Individualized Family Service Plan (IFSP). A written document identifying the specially designed services for an infant or toddler with a disability and the family of such infant or toddler.

Independent educational evaluation (IEE). An evaluation conducted by a qualified examiner who is not an EDIS examiner or an examiner funded by the DoDEA school who conducted the evaluation with which the parent is in disagreement.

Infants and toddlers with disabilities. Children from birth up to 3 years of age, inclusive, who need EIS because:

(1) They are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development including vision and hearing, communication development, social or emotional development, adaptive development; or

(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Inter-component. Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities, and their families.

Manifestation determination. The process in which the CSC reviews all relevant information and the relationship between the child's disability and the child's behavior to determine whether the behavior is a manifestation of the child's disability.

Mediation. A confidential, voluntary, informal dispute resolution process that is provided at no charge to the parents, whether or not a due process petition has been filed, in which the disagreeing parties engage in a discussion of issues related to the provision of the child's EIS or special education and related services in accordance with the requirements of IDEA and this part, in the presence of, or through, a qualified and impartial mediator who is trained in effective mediation techniques.

Medical services. Those evaluative, diagnostic, and therapeutic, services provided by a licensed and credentialed medical provider to assist providers of EIS, regular and special education teachers, and providers of related services to develop and implement IFSPs and IEPs.

Multidisciplinary. The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities and development of an IFSP or an IEP.

Native language. When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

Natural environment. A setting, including home and community, in which children without disabilities participate.

Non-DoD school or facility. A public or private school or other educational program not operated by DoD.

Parent. The natural, adoptive, or foster parent of a child, a guardian, an individual acting in the place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the child's welfare if that person contributes at least one-half of the child's support.

Personally identifiable information. Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Information includes: The name of the child, the child's parent or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Primary referral source. Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and

bring the child to the attention of the EDIS.

Psychological services. Psychological services include: Administering psychological and educational tests and other assessment procedures; interpreting assessment results; obtaining, integrating and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.

Public awareness program. Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of EIS. Procedures to determine the availability of information on EIS to parents are also included in that program.

Qualified. A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides evaluation or assessment, EIS, special education or related services to an infant, toddler, or child with a disability.

Rehabilitation counseling. Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded in accordance with the Rehabilitation Act of 1973, 29 U.S.C. chapter 16.

Related services. Transportation and such developmental, corrective, and other supportive services, as required, to assist a child with a disability to benefit from special education under the child's IEP. The term includes services or consults in the areas of speech-language pathology; audiology services; interpreting services; psychological services; physical and occupational therapy; recreation including therapeutic recreation; social work services; and school nurse services designed to enable a child with a disability to receive a FAPE as described in the child's IEP; early identification and assessment of disabilities in children; counseling services including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluative purposes. The term does not include a medical device that is surgically implanted or the replacement of such.

Related services assigned to the Military Departments. Medical and psychological services, audiology, and optometry for diagnostic or evaluative purposes, including consults, to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive special services. In the overseas and domestic areas, transportation is provided as a related service by the Military Department when transportation is prescribed in an IFSP for an infant or toddler, birth to 3 years of age, with disabilities.

Resolution meeting. The meeting between parents and relevant school personnel, which must be convened within a specified number of days after receiving notice of a due process complaint and prior to the initiation of a due process hearing, in accordance with the IDEA and this part. The purpose of the meeting is for the parent to discuss the due process complaint and the facts giving rise to the complaint so that the school has the opportunity to resolve the complaint.

Resolution period. That period of time following a resolution meeting, the length of which is defined in this part, during which the school is afforded an opportunity to resolve the parent's concerns before the dispute can proceed to a due process hearing.

Separate facility. A school or a portion of a school, regardless of whether it is operated by DoD, attended exclusively by children with disabilities.

Serious bodily injury. A bodily injury, which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Service coordination. Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided.

Special education. Specially designed instruction, which is provided at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

Supplementary aids and services. Aids, services, and other supports that are provided in regular education classes or other educational-related settings, and in extracurricular and non-academic settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

Transition services. A coordinated set of activities for a child with a disability that 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 post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

Transportation. A service that includes transportation and related costs, including the cost of mileage or travel by taxi, common carrier, tolls, and parking expenses, that are necessary to: enable an eligible child with a disability and the family to receive EIS, when prescribed in a child's IFSP; enable an eligible child with a disability to receive special education and related services, when prescribed as a related service by the child's IEP; and enable a child to obtain an evaluation to determine eligibility for special education and related services, if necessary. It also includes specialized equipment, including special or adapted buses, lifts, and ramps needed to transport children with disabilities.

Weapon. Defined in Department of Defense Education Activity Regulation 2051.1, ''Disciplinary Rules and Procedures'' (available at *http://www.dodea.edu/foia/iod/pdf/2051_1a.pdf*).

§ 57.4 Policy.

It is DoD policy that:

(a) Infants and toddlers with disabilities and their families who (but for the children's age) would be entitled to enroll in a DoDEA school in

accordance with 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be provided EIS.

(b) The DoD shall engage in child-find activities for all children age birth to 21, inclusive, who are entitled by 20 U.S.C. 921–932 or 10 U.S.C. 2164 to enroll or are enrolled in a DoDEA school.

(c) Children with disabilities who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be provided a FAPE in the least restrictive environment, including if appropriate to the needs of the individual child, placement in a residential program for children with disabilities in accordance with the child's IEP and at no cost to the parents.

(d) The Military Departments and DoDEA shall cooperate in the delivery of related services prescribed by section 1401(26) of the IDEA and this part as may be required to assist eligible children with disabilities to benefit from special education.

(e) Children with disabilities who are eligible to enroll in a DoDEA school in accordance with 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall not be entitled to provision of a FAPE by DoDEA, or to the procedural safeguards prescribed by this part in accordance with the IDEA, if:

(1) The sponsor is assigned to an overseas area where a DoDEA school is available within the commuting area of the sponsor's overseas assignment, but the sponsor does not elect to enroll the child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE; or

(2) The sponsor is assigned in the United States or in a U.S. territory, commonwealth, or possession and the sponsor's child meets the eligibility requirements for enrollment in a DoDEA school, but the sponsor does not elect to enroll the child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE.

§ 57.5 Responsibilities.

(a) The ASD(R&FM) under the authority, direction, and control of the USD(P&R) shall:

(1) Establish, in accordance with DoD Instruction 5105.18, ''DoD Intergovernmental and Intragovernmental Committee Management Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510518p.pdf*), a DoD Coordinating Committee to recommend policies regarding the provision of early intervention and special education services.

(2) Ensure the development, implementation and administration of a system of services for infants and toddlers with disabilities and their families and children with disabilities; and provide compliance oversight for early intervention and special education in accordance with DoD Directive 5124.02, ''Under Secretary of Defense for Personnel and Readiness (USD(P&R))'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf*); 20 U.S.C. 921–932; the applicable statutory provision of the IDEA; 10 U.S.C. 2164; DoD Directive 1342.20 and implementing guidance authorized by this part.

(3) Oversee DoD Component collaboration on the provision of services and transition support to infants, toddlers, and school-aged children.

(4) Develop a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth through 21 years, inclusive, who may require early intervention or special education services, in accordance with the IDEA.

(5) Develop and provide guidance as necessary for the delivery of services for children with disabilities and for the protection of procedural rights consistent with the IDEA and implementing guidance authorized by this part.

(6) Coordinate with the Secretaries of the Military Departments to ensure that their responsibilities, as detailed in paragraph (f) of this section, are completed.

(7) Direct the development and implementation of a comprehensive system of personnel development (CSPD) for personnel serving infants and toddlers with disabilities and children with disabilities, and their families.

(8) Develop requirements and procedures for compiling and reporting data on the number of eligible infants and toddlers with disabilities and their families in need of EIS and children in need of special education and related services.

(9) Require DoDEA schools provide educational information for assignment coordination and enrollment in the Services' Exceptional Family Member Program or Special Needs Program consistent with DoD Instruction 1315.19, ''Authorizing Special Needs Family Members Travel Overseas at Government Expense'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/131519p.pdf*).

(10) Identify representatives to serve on the Department of Defense Coordinating Committee on Early Intervention, Special Education, and Related Services (DoD–CC).

(11) Ensure delivery of appropriate early intervention and educational services to eligible infants, toddlers, and children, and their families as appropriate pursuant to the IDEA and this part through onsite monitoring of special needs programs and submission of an annual compliance report.

(b) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall:

(1) Advise the USD(P&R) and consult with the General Counsel of the Department of Defense (GC, DoD) regarding the provision of EIS and related services.

(2) Oversee development of provider workload standards and performance levels to determine staffing requirements for EIS and related services. The standards shall take into account the provider training needs, the requirements of this part, and the additional time required to provide EIS and related services in schools and the natural environments, and for the coordination with other DoD Components and other service providers, indirect services including analysis of data, development of the IFSP, transition planning, and designing interventions and accommodations.

(3) Establish and maintain an automated data system to support the operation and oversight of the Military Departments' delivery of EIS and related services.

(4) Assign geographical areas of responsibility for providing EIS and related services under the purview of healthcare providers to the Military Departments. Periodically review the alignment of geographic areas to ensure that resource issues (*e.g.,* base closures) are considered in the cost-effective delivery of services.

(5) Establish a system for measuring EIS program outcomes for children and their families.

(6) Resolve disputes among the DoD Components providing EIS.

(c) The Director, Defense Health Agency (DHA), under the authority, direction, and control of the ASD(HA), shall identify representatives to serve on the DoD–CC.

(d) The Director, DoD Education Activity (DoDEA), under the authority, direction, and control of the USD(P&R), and through the ASD(R&FM), in accordance with DoD Directive 5124.02, shall ensure that:

(1) Children who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 are identified and referred for evaluation if they are suspected of having disabilities, and are afforded appropriate procedural safeguards in accordance with the IDEA and implementing guidance authorized by this part.

(2) Children who meet the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164 shall be evaluated in accordance with the IDEA and implementing guidance authorized by this part, as needed. If found eligible for special education and related services, they shall be provided a FAPE in accordance with an IEP, with services delivered in the least restrictive environment and procedural safeguards in accordance with the requirements of the IDEA and implementing guidance authorized by this part.

(3) Records are maintained on the special education and related services provided to children in accordance with this part, pursuant to 32 CFR part 310.

(4) Related services as prescribed in an IEP for a child with disabilities enrolled in a DoDEA school in the United States, its territories, commonwealths, or possessions are provided by DoDEA.

(5) Transportation is provided by DoDEA in overseas and domestic areas as a related service to children with disabilities when transportation is prescribed in a child's IEP. The related service of transportation includes necessary accommodations to access and leave the bus and to ride safely on the bus and transportation between the child's home, the DoDEA school, or another location, as specified in the child's IEP.

(6) Appropriate personnel participate in the development and implementation of a CSPD.

(7) Appropriate written guidance is issued to implement the requirements pertaining to special education and related services under 20 U.S.C. 921–932, 10 U.S.C. 2164, and the IDEA.

(8) Activities to identify and train personnel to monitor the provision of services to eligible children with disabilities are funded.

(9) DoDEA schools that operate pursuant to 20 U.S.C. 921–932 and 10 U.S.C. 2164 conduct child-find activities for all eligible children;

(10) A free appropriate public education (FAPE) and procedural safeguards in accordance with IDEA and this part available to children with disabilities who are entitled to enroll in DoDEA schools under the enrollment eligibility criteria of 20 U.S.C. 921–932 or 10 U.S.C. 2164. However, a FAPE, or the procedural safeguards prescribed by the IDEA and this part, shall NOT be available to such children, if:

(i) The sponsor is assigned to an overseas area where a DoDEA school is available within the commuting area of the sponsor's assignment, but the sponsor does not elect to enroll his or her child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE; or

(ii) The sponsor is assigned in the United States or in a U.S. territory, commonwealth, or possession and the sponsor's child meets the eligibility requirements for enrollment in a DoDEA school, but the sponsor does not elect to enroll the child in a DoDEA school for reasons other than DoDEA's alleged failure to provide a FAPE.

(11) The educational needs of children with and without disabilities are met comparably, in accordance with § 57.6(b) of this part.

(12) Educational facilities and services (including the start of the school day and the length of the school year) operated by DoDEA for children with and without disabilities are comparable.

(13) All programs providing special education and related services are monitored for compliance with this part and with the substantive rights, protections, and procedural safeguards of the IDEA and this part at least once every 3 years.

(14) A report is submitted to the USD(P&R) not later than September 30 of each year certifying whether all schools are in compliance with the IDEA and this part, and are affording children with disabilities the substantive rights, protections, and procedural safeguards of the IDEA.

(15) Transition assistance is provided in accordance with IDEA and this part to promote movement from early intervention or preschool into the school setting.

(16) Transition services are provided in accordance with IDEA and this part to facilitate the child's movement into different educational settings and post-secondary environments.

(e) The GC, DoD shall identify representatives to serve on the DoD–CC.

(f) The Secretaries of the Military Departments shall:

(1) Establish educational and developmental intervention services (EDIS) to ensure infants and toddlers with disabilities are identified and provided EIS where appropriate, and are afforded appropriate procedural safeguards in accordance with the requirements of the IDEA and implementing guidance authorized by this part.

(2) Staff EDIS with appropriate professional staff, based on the services required to serve children with disabilities.

(3) Provide related services required to be provided by a Military Department in accordance with the mandates of this part for children with disabilities. In the overseas areas served by DoDEA schools, the related services required to be provided by a Military Department under an IEP necessary for the student to benefit from special education include medical services for diagnostic or evaluative purposes; social work; community health nursing; dietary, audiological, optometric, and psychological testing and therapy; occupational therapy; and physical therapy. Transportation is provided as a related service by the Military Department when it is prescribed in a child's IFSP for an infant or toddler birth up to 3 years of age, inclusive, with disabilities. Related services shall be administered in accordance with guidance issued pursuant to this part, including guidance from the ASD(HA) on staffing and personnel standards.

(4) Issue implementing guidance and forms necessary for the operation of EDIS in accordance with this part.

(5) Provide EIS to infants and toddlers with disabilities and their families, and related services to children with disabilities as required by this part at the same priority that medical care is provided to active duty military members.

(6) Provide counsel from the Military Department concerned or request counsel from the Defense Office of Hearings and Appeals (DOHA) to represent the Military Department in impartial due process hearings and administrative appeals conducted in accordance with this part for infants and toddlers birth up to 3 years of age, inclusive, with disabilities who are eligible for EIS.

(7) Execute Departmental responsibilities under the Exceptional Family Member program (EFMP) prescribed by DoD Instruction 1315.19.

(8) Train command personnel to fully understand their legal obligations to ensure compliance with and provide the services required by this part.

(9) Fund activities to identify and train personnel to monitor the provision of services to eligible children with disabilities.

(10) Require the development of policies and procedures for providing, documenting, and evaluating EDIS, including EIS and related services provided to children receiving special education in a DoDEA school.

(11) Maintain EDIS to provide necessary EIS to eligible infants and toddlers with disabilities and related services to eligible children with disabilities in accordance with this part and the substantive rights, protections, and procedural safeguards of the IDEA, § 57.6(a) and § 57.6(c) of this part.

(12) Implement a comprehensive, coordinated, inter-component,

community-based system of EIS for eligible infants and toddlers with disabilities and their families using the procedures established in § 57.6(a) of this part and guidelines from the ASD(HA) on staffing and personnel standards.

(13) Provide transportation for EIS pursuant to the IDEA and this part.

(14) Provide transportation for children with disabilities pursuant to the IDEA and this part. The Military Departments are to provide transportation for a child to receive medical or psychological evaluations at a medical facility in the event that the local servicing military treatment facility (MTF) is unable to provide such services and must transport the child to another facility.

(15) Require that EDIS programs maintain the components of an EIS as required by the IDEA and this part, to include:

(i) A comprehensive child-find system, including a system for making referrals for services that includes timelines and provides for participation by primary referral sources, and that establishes rigorous standards for appropriately identifying infants and toddlers with disabilities for services.

(ii) A public awareness program focusing on early identification of infants and toddlers with disabilities to include:

(A) Preparation of information materials for parents regarding the availability of EIS, especially to inform parents with premature infants or infants with other physical risk factors associated with learning or developmental complications.

(B) Dissemination of those materials to all primary referral sources, especially hospitals and physicians, for distribution to parents.

(C) A definition of developmental delay, consistent with § 57.6(g) of this part, to be used in the identification of infants and toddlers with disabilities who are in need of services.

(D) Availability of appropriate EIS.

(iii) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler and identification of the needs of the child's family to assist appropriately in the development of the infant or toddler.

(iv) Procedures for development of an Individualized Family Service Plan (IFSP) and coordination of EIS for families of eligible infants and toddlers with disabilities.

(v) A system of EIS designed to support infants and toddlers and their families in the acquisition of skills needed to become functionally independent and to reduce the need for additional support services as toddlers enter school.

(vi) A central directory of information on EIS resources and experts available to military families.

(16) Implement a comprehensive system of personnel development consistent with the requirements of the IDEA.

(17) Require that EDIS participate in the existing MTF quality assurance program, which monitors and evaluates the medical services for children receiving such services as described by this part. Generally accepted standards of practice for the relevant medical services shall be followed, to the extent consistent with the requirements of the IDEA including provision of EIS in a natural environment, to ensure accessibility, acceptability, and adequacy of the medical portion of the program provided by EDIS.

(18) Require transition services to promote movement from early intervention, preschool, and other educational programs into different educational settings and post-secondary environments.

(19) Direct that each program providing EIS is monitored for compliance with this part, and the substantive rights, protections, and procedural safeguards of the IDEA, at least once every 3 years.

(20) Submit a report to the USD(P&R) not later than September 30 of each year stating whether all EDIS programs are in compliance with this part and are affording infants and toddlers the substantive rights, protections, and procedural safeguards of the IDEA, as stated in § 57.6(f) of this part.

(21) Compile and report EDIS workload and compliance data using the system established by the ASD(HA) as stated in § 57.6(f).

(g) The Director, DOHA, under the authority, direction, and control of the GC, DoD/Director, Defense Legal Services Agency, shall:

(1) Ensure impartial due process hearings are provided in accordance with the IDEA and implementing guidance authorized by this part with respect to complaints related to special education and related services arising under the IDEA.

(2) Ensure DOHA Department Counsel represents DoDEA in all due process proceedings arising under the IDEA for children age 3 through 21 who are eligible for special education and related services.

(3) Ensure DOHA Department Counsel, upon request by a Military Department, represents the Military Department in due process proceedings arising under the IDEA for infants and toddlers birth up to 3 years of age with disabilities who are eligible for EIS.

(4) Ensure the DOHA Center for Alternative Dispute Resolution (CADR) maintains a roster of mediators qualified in special education disputes and, when requested, provides a mediator for complaints related to special education and related services arising under the IDEA.

§ 57.6 Procedures.

(a) *Procedures for the Provision of EIS for Infants and Toddlers with Disabilities*—(1) *General.*

(i) There is an urgent and substantial need to:

(A) Enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay and to recognize the significant brain development that occurs during a child's first 3 years of life.

(B) Reduce educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age.

(C) Maximize the potential for individuals with disabilities to live independently.

(D) Enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.

(ii) All procedures and services within EIS must be in accordance with the IDEA and the provisions of this part.

(2) *Identification and screening.* (i) Each Military Department shall develop and implement in its assigned geographic area a comprehensive child-find and public awareness program, pursuant to the IDEA and this part, that focuses on the early identification of infants and toddlers who are eligible to receive EIS pursuant to this part.

(ii) The military treatment facility (MTF) and Family Advocacy Program must be informed that EDIS will accept direct referrals for infants and toddlers from birth up to 3 years of age who are:

(A) Involved in a substantiated case of child abuse or neglect; or

(B) Identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(iii) All other DoD Components will refer infants and toddlers with suspected disabilities to EDIS in collaboration with the parents.

(iv) Upon receipt of a referral, EDIS shall appoint a service coordinator.

(v) All infants and toddlers referred to the EDIS for EIS shall be screened to determine the appropriateness of the referral and to guide the assessment process.

(A) Screening does not constitute a full evaluation. At a minimum, screening shall include a review of the medical and developmental history of the referred infant or toddler through a parent interview and a review of medical records.

(B) If screening is conducted prior to the referral, or if there is a substantial or obvious biological risk, a screening following the referral may not be necessary.

(C) If EDIS determines that an evaluation is not necessary based on screening results, EDIS will provide written notice to the parents in accordance with paragraph (a)(9) of this section.

(3) *Assessment and evaluation*—(i) *Assessments and evaluations.* The assessment and evaluation of each infant and toddler must:

(A) Be conducted by a multidisciplinary team.

(B) Include:

(*1*) A review of records related to the infant's or toddler's current health status and medical history.

(*2*) An assessment of the infant's or toddler's needs for EIS based on personal observation of the child by qualified personnel.

(*3*) An evaluation of the infant's or toddler's level of functioning in each of the following developmental areas, including a multidisciplinary assessment of the unique strengths and needs of the child and the identification of services appropriate to meet those needs.

(*i*) Cognitive development.

(*ii*) Physical development, including functional vision and hearing.

(*iii*) Communication development.

(*iv*) Social or emotional development.

(*v*) Adaptive development.

(*4*) Informed clinical opinion of qualified personnel if the infant or toddler does not qualify based on standardized testing and there is probable need for services.

(ii) *Family assessments.* (A) Family assessments must include consultation with the family members.

(B) If EDIS conducts an assessment of the family, the assessment must:

(*1*) Be voluntary on the part of the family.

(*2*) Be conducted by personnel trained to utilize appropriate methods and procedures.

(*3*) Be based on information provided by the family through a personal interview.

(*4*) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the infant's or toddler's development and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler.

(iii) *Standards for Assessment Selection and Procedures.* EDIS shall ensure, at a minimum, that:

(A) Evaluators administer tests and other evaluations in the native language of the infant or toddler, or the family's native language, or other mode of communication, unless it is clearly not feasible to do so.

(B) Assessment, evaluation procedures, and materials are selected and administered so as not to be racially or culturally discriminatory.

(C) No single procedure is used as the sole criterion for determining an infant's or toddler's eligibility under this part.

(D) Qualified personnel conduct evaluations and assessments.

(iv) *Delivery of Intervention Services.* With parental consent, the delivery of intervention services may begin before the completion of the assessment and evaluation when it has been determined by a multidisciplinary team that the infant or toddler or the infant's or toddler's family needs the service immediately. Although EDIS has not completed all assessments, EDIS must develop an IFSP before the start of services and complete the remaining assessments in a timely manner.

(4) *Eligibility.* (i) The EDIS team shall meet with the parents and determine eligibility. The EIS team shall document the basis for eligibility in an eligibility report and provide a copy to the parents.

(ii) Infants and toddlers from birth up to 3 years of age with disabilities are eligible for EIS if they meet one of the following criteria:

(A) The infant or toddler is experiencing a developmental delay in one or more of the following areas: Physical development; cognitive development; communication development; social or emotional development; or adaptive development, as verified by a developmental delay of two standard deviations below the mean as measured by diagnostic instruments and procedures in at least one area; a 25 percent delay in at least one developmental area on assessment instruments that yield scores in months; a developmental delay of 1.5 standard deviations below the mean as measured by diagnostic instruments and procedures in two or more areas; or a 20 percent delay in two or more developmental areas on assessment instruments that yield scores in months.

(B) The infant or toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Includes conditions such as, chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(5) *Timelines.* (i) EIS shall complete the initial evaluation and assessment of each infant and toddler (including the family assessment) in a timely manner ensuring that the timeline in paragraph (a)(6)(ii) of this section is met.

(ii) The Military Department responsible for providing EIS shall develop procedures requiring that, if circumstances make it impossible to complete the evaluation and assessment within a timely manner (*e.g.,* if an infant or toddler is ill), EDIS shall:

(A) Document those circumstances.

(B) Develop and implement an appropriate interim IFSP in accordance with this part.

(6) *IFSP.* (i) The EDIS shall develop and implement an IFSP for each infant and toddler with a disability, from birth up to 3 years of age, who meets the eligibility criteria for EIS.

(ii) EDIS shall convene a meeting to develop the IFSP of an infant or toddler with a disability. The meeting shall be scheduled as soon as possible following its determination that the infant or toddler is eligible for EIS, but not later than 45 days from the date of the referral for services.

(iii) The IFSP team meeting to develop and review the IFSP must include:

(A) The parent or parents of the infant or toddler.

(B) Other family members, as requested by the parent, if feasible.

(C) An advocate or person outside of the family if the parent requests that person's participation.

(D) The service coordinator who has worked with the family since the initial referral of the infant or toddler or who is responsible for the implementation of the IFSP.

(E) The persons directly involved in conducting the evaluations and assessments.

(F) As appropriate, persons who shall provide services to the infant or toddler or the family.

(iv) If a participant listed in paragraph (a)(6)(iii) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, which may include:

(A) A telephone conference call or other electronic means of communication.

(B) Providing knowledgeable, authorized representation.

(C) Providing pertinent records for use at the meeting.

(v) The IFSP shall contain:

(A) A statement of the infant's or toddler's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on the information from the evaluation and assessments.

(B) A statement of the family's resources, priorities, and concerns about enhancing the infant's or toddler's development.

(C) A statement of the measurable results or measurable outcomes expected to be achieved for the infant or toddler and the family. The statement shall contain pre-literacy and language skills, as developmentally appropriate for the infant or toddler, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the results and services are necessary.

(D) A statement of the specific EIS based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services.

(E) A statement of the natural environments in which EIS will be provided including a justification of the extent, if any, to which the services shall not be provided in a natural environment because the intervention cannot be achieved satisfactorily for the infant or toddler. The IFSP must include a justification for not providing a particular early intervention service in the natural environment.

(F) The projected dates for initiation of services and the anticipated length, duration, and frequency of those services.

(G) The name of the service coordinator who shall be responsible for the implementation of the IFSP and for coordination with other agencies and persons. In meeting these requirements, EDIS may:

(*1*) Assign the same service coordinator appointed at the infant or toddler's initial referral for evaluation to implement the IFSP;

(*2*) Appoint a new service coordinator; or

(*3*) Appoint a service coordinator requested by the parents.

(H) A description of the appropriate transition services supporting the movement of the toddler with a disability to preschool or other services.

(vi) EDIS shall explain the contents of the IFSP to the parents and shall obtain an informed, written consent from the parents before providing EIS described in the IFSP.

(vii) The IFSP shall be implemented within ten business days of completing the document, unless the IFSP team, including the parents, documents the need for a delay.

(viii) If a parent does not provide consent for participation in all EIS, EDIS shall still provide those interventions to which a parent does give consent.

(ix) EDIS shall evaluate the IFSP at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the needs of the child and family). The purpose of the periodic review is to determine:

(A) The degree to which progress toward achieving the outcomes is being made.

(B) Whether modification or revision of the outcomes or services is necessary.

(x) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(7) *Transition from early intervention services.* (i) EDIS shall provide a written transition plan for toddlers receiving EIS to facilitate their transition to preschool or other setting, if appropriate. A transition plan must be recorded on the IFSP between the toddler's second and third birthday and not later than 90 days before the toddler's third birthday and shall include the following steps to be taken:

(A) A plan for discussions with, and training of, parents, as appropriate, regarding future transition from early intervention services, and for obtaining parental consent to facilitate the release of toddler records in order to meet child-find requirements of DoDEA, and to ensure smooth transition of services;

(B) The specific steps to be taken to help the toddler adjust to, and function in, the preschool or other setting and changes in service delivery;

(C) The procedures for providing notice of transition to the DoDEA CSC, for setting a pre-transition meeting with the CSC (with notice to parents), and for confirmation that child-find information, early intervention assessment reports, the IFSP, and relevant supporting documentation are transmitted to the DoDEA CSC;

(D) Identification of transition services or other activities that the IFSP team determines are necessary to support the transition of the child.

(ii) Families shall be included in the transition planning. EDIS shall inform the toddler's parents regarding future preschool, the child-find requirements of the school, and the procedures for transitioning the toddler from EIS to preschool.

(iii) Not later than 6 months before the toddler's third birthday, the EDIS service coordinator shall obtain parental consent prior to release of identified records of a toddler receiving EIS to the DoD local school in order to allow the DoDEA school to meet child-find requirements.

(iv) The EDIS service coordinator shall initiate a pre-transition meeting with the CSC, and shall provide the toddler's early intervention assessment reports, IFSP, and relevant supporting documentation. The parent shall receive reasonable notice of the pre-transition meeting, shall receive copies of any documents provided to the CSC, and shall have the right to participate in and provide input to the pre-transition meeting.

(v) As soon as reasonably possible following receipt of notice of a toddler potentially transitioning to preschool, the local DoDEA school shall convene a CSC. The CSC and EDIS shall cooperate to obtain parental consent, in accordance with IDEA and this part, to conduct additional evaluations if necessary.

(vi) Based on the information received from EDIS, the CSC, coordinating with EDIS, will determine at the pre-transition meeting whether:

(A) No additional testing or observation is necessary to determine that the toddler is eligible for special education and related services, in which case the CSC shall develop an eligibility report based on the EDIS early intervention assessment reports, IFSP, supporting documentation and other information obtained at the pre-transition meeting, in accordance with paragraph (b) of this section; or

(B) Additional testing or observation is necessary to determine whether the toddler is eligible for special education and related services, in which case the CSC shall develop an assessment plan to collect all required information necessary to determine eligibility for special education and obtain parental consent, in accordance with IDEA and this part, for evaluation in accordance with paragraph (b) of this section.

(vii) In the event that the toddler is first referred to EDIS fewer than 90 days before the toddler's third birthday, EDIS and the DoDEA school shall work cooperatively in the evaluation process

and shall develop a joint assessment plan to determine whether the toddler is eligible for EIS or special education.

(A) EDIS shall complete its eligibility determination process and the development of an IFSP, if applicable.

(B) The CSC shall determine eligibility for special education.

(viii) Eligibility assessments shall be multidisciplinary and family-centered and shall incorporate the resources of the EDIS as necessary and appropriate.

(ix) Upon completion of the evaluations, the CSC shall schedule an eligibility determination meeting at the local school, no later than 90 days prior to the toddler's third birthday.

(A) The parents shall receive reasonable notice of the eligibility determination meeting, shall receive copies of any documents provided to the CSC, and shall have the right to participate in and provide input to the meeting.

(B) EDIS and the CSC shall cooperate to develop an eligibility determination report based upon all available data, including that provided by EDIS and the parents, in accordance with paragraph (b) of this section.

(x) If the toddler is found eligible for special education and related services, the CSC shall develop an individualized education program (IEP) in accordance with paragraph (b) of this section, and must implement the IEP on or before the toddler's third birthday.

(xi) If the toddler's third birthday occurs during the period June through August (the traditional summer vacation period for school systems), the CSC shall complete the eligibility determination process and the development of an IEP before the end of the school year preceding the toddler's third birthday. An IEP must be prepared to ensure that the toddler enters preschool services with an instructional program at the start of the new school year.

(xii) The full transition of a toddler shall occur on the toddler's third birthday unless the IFSP team and the CSC determine that an extended transition is in the best interest of the toddler and family.

(A) An extended transition may occur when:

(*1*) The toddler's third birthday falls within the last 6 weeks of the school year;

(*2*) The family is scheduled to have a permanent change of station (PCS) within 6 weeks after a toddler's third birthday; or

(*3*) The toddler's third birthday occurs after the end of the school year and before October 1.

(B) An extended transition may occur if the IFSP team and the CSC determine that extended EIS beyond the toddler's third birthday are necessary and appropriate, and if so, how long extended services will be provided.

(*1*) The IFSP team, including the parents, may decide to continue services in accordance with the IFSP until the end of the school year, PCS date, or until the beginning of the next school year.

(*2*) Extended services must be delivered in accordance with the toddler's IFSP, which shall be updated if the toddler's or family's needs change on or before the toddler's third birthday.

(*3*) The CSC shall maintain in its records meeting minutes that reflect the decision for EDIS to provide an extended transition for the specified period.

(*4*) Prior to the end of the extended transition period, the CSC shall meet to develop an IEP that shall identify all special education and related services that will begin at the end of the transition period and meet all requirements of the IDEA and this part, in accordance with paragraph (b) of this section.

(C) The IFSP team and the CSC may jointly determine that the toddler should receive services in the special education preschool prior to the toddler's third birthday.

(*1*) If only a portion of the child's services will be provided by the DoDEA school, the information shall be identified in the IFSP, which shall also specify responsibilities for service coordination and transition planning. The CSC shall develop an IEP that shall identify all services to be delivered at the school, in accordance with paragraph (b) of this section.

(*2*) If all the toddler's services will be provided by the DoDEA school, the services will be delivered pursuant to an IEP developed in accordance with paragraph (b) of this section. Transition activities and other services under the IFSP will terminate with the toddler's entry into the special education preschool.

(*3*) Early entry into preschool services should occur only in exceptional circumstances (*e.g.,* to facilitate natural transitions).

(xiii) In the case of a child who may not be eligible for DoDEA preschool special education services, with the approval of the parents, EDIS shall make reasonable efforts to convene a conference among EDIS, the family, and providers of other services for children who are not eligible for special education preschool services (*e.g.,* community preschools) in order to explain the basis for this conclusion to the parents and obtain parental input.

(8) *Maintenance of records.* (i) EDIS officials shall maintain all EIS records, in accordance with 32 CFR part 310.

(ii) EIS records, including the IFSP and the documentation of services delivered in accordance with the IFSP, are educational records consistent with 32 CFR part 285 and shall not be placed in the child's medical record.

(9) *Procedural safeguards.* (i) Parents of an infant or toddler who is eligible for EIS shall be afforded specific procedural safeguards that must include:

(A) The right to confidentiality of personally identifiable information in accordance with 32 CFR part 310, including the right of a parent to receive written notice and give written consent to the exchange of information between the Department of Defense and outside agencies in accordance with Federal law and 32 CFR part 310 and 32 CFR part 285.

(B) The opportunity to inspect and review records relating to screening, evaluations and assessments, eligibility determinations, development and implementation of IFSPs.

(C) The right to determine whether they or other family members will accept or decline any EIS, and to decline such a service after first accepting it without jeopardizing the provision of other EIS.

(D) The right to written parental consent.

(*1*) Consent must be obtained before evaluation of the infant or toddler in accordance with this section.

(*2*) Consent must be obtained before initiation of EIS in accordance with this section.

(*3*) If consent is not given, EDIS shall make reasonable efforts to ensure that the parent:

(*i*) Is fully aware of the nature of the evaluation and assessment or the services that would be available.

(*ii*) Understands that the infant or toddler will not be able to receive the evaluation and assessment or services unless consent is given.

(E) The right to prior written notice.

(*1*) Prior written notice must be given to the parents of an infant or toddler entitled to EIS a reasonable time before EDIS proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate EIS to the infant or toddler and any family member.

(*2*) The notice must be in sufficient detail to inform the parents about:

(*i*) The action that is being proposed or refused.

(*ii*) The reasons for taking the action.

(*iii*) Each of the procedural safeguards that are available in accordance with this section, including availability of mediation, administrative complaint procedures, and due process complaint procedures that are available for dispute resolution as described in paragraph (d) of this section, including descriptions of how to file a complaint and the applicable timelines.

(*3*) The notice must be provided in language written for a general lay audience and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(F) The right to timely administrative resolution of complaints.

(G) The availability of dispute resolution with respect to any matter relating to the provision of EIS to an infant or toddler, through the administrative complaint, mediation and due process procedures described in paragraph (d) of this section, except the requirement to conduct a resolution meeting, in the event of a dispute between the Military Department concerned and the parents regarding EIS.

(H) Any party aggrieved by the decision regarding a due process complaint filed in accordance with paragraph (d) of this section shall have the right to bring a civil action in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(ii) During the pendency of any proceeding or action involving a complaint by the parent of an infant or toddler with a disability relating to the provision of EIS, unless the parent and EDIS otherwise agree, the infant or toddler shall continue to receive the appropriate EIS currently being provided under the most recent signed IFSP or, if applying for initial EIS services, shall receive the services not in dispute.

(10) *Mediation and due process procedures.* Mediation and due process procedures, described in paragraph (d) of this section, except the requirement to conduct a resolution meeting, are applicable to early intervention when the Military Department concerned and the parents will be the parties in the dispute.

(b) *Procedures for the provision of educational programs and services for children with disabilities, ages 3 through 21 years, inclusive*—(1) *Parent involvement and general provisions.* (i) The CSC shall take reasonable steps to provide for the participation of the parent(s) in the special education program of his or her child. School officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child. Special education parental rights and responsibilities will be provided in the parent's native language, unless it is clearly not feasible to do so, *e.g.,* low incidence language or not a written language.

(ii) The CSC shall afford the child's parents the opportunity to participate in CSC meetings to determine their child's initial or continuing eligibility for special education and related services, to prepare or change the child's IEP, or to determine or change the child's placement.

(iii) No child shall be required to obtain a prescription for a substance covered by the Controlled Substances Act, as amended, 21 U.S.C. 801 *et seq.* as a condition of attending school, receiving an evaluation, or receiving services.

(iv) For meetings described in this section, the parent of a child with a disability and the DoDEA school officials may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(2) *Identification and referral.* (i) DoDEA shall:

(A) Engage in child-find activities to locate, identify, and screen all children who are entitled to enroll in DDESS in accordance with DoD Instruction 1342.26, ''Eligibility Requirements for Minor Dependents to Attend Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134226p.pdf*) or in DoDDS in accordance with DoDEA Regulation 1342.13, ''Eligibility Requirements for Education of Elementary and Secondary School-Age Dependents in Overseas Areas'' (available at *http://www.dodea.edu/foia/iod/pdf/1342_13.pdf*) who may require special education and related services.

(B) Cooperate with the Military Departments to conduct ongoing child-find activities and periodically publish any information, guidelines, and directions on child-find activities for eligible children with disabilities, ages 3 through 21 years, inclusive.

(C) Conduct the following activities to determine if children may need special education and related services:

(*1*) Review school records for information about student performance on system-wide testing and other basic skills tests in the areas of reading and language arts and mathematics.

(*2*) Review school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child. For children with disabilities, any health records or other information that tends to identify a child as a person with a disability must be maintained in confidential files that are not co-mingled with other records and that are available only to essential staff for the purpose of providing effective education and services to the child.

(*3*) Review school discipline records and maintain the confidentiality of such records and any information that tends to identify a child as a person with a disability.

(*4*) Participate in transition activities of children receiving EIS who may require special education preschool services.

(ii) DoDEA school system officials, related service providers, or others who suspect that a child has a possible disabling condition shall submit a child-find referral to the CSC containing, at a minimum, the name and contact information for the child and the reason for the referral.

(iii) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services and does not require informed consent.

(3) *Incoming students.* The DoDEA school will take the following actions, in consultation with the parent, when a child transfers to a DoDEA school with an active IEP:

(i) If the current IEP is from a non-DoDEA school:

(A) Promptly obtain the child's educational records including information regarding assessment, eligibility, and provision of special education and related services from the previous school.

(B) Provide FAPE, including services comparable (*i.e.,* similar or equivalent) to those described in the incoming IEP, which could include extended school year services, in consultation with the parents, until the CSC:

(*1*) Conducts an evaluation, if determined necessary by such agency.

(*2*) Develops, adopts, and implements a new IEP, if appropriate, in accordance with the requirements of the IDEA and this part within 30 school days of receipt of the IEP.

(ii) If the current IEP is from a DoDEA school, the new school must provide the child a FAPE, including services comparable to those described in the incoming IEP, until the new school either:

(A) Adopts the child's IEP from the previous DoDEA school; or

(B) Develops, adopts, and implements a new IEP that meets the requirements of the IDEA and this part within 30 school days of receipt of the incoming IEP.

(iii) Coordinate assessments of children with disabilities who transfer with the child's previous school as quickly as possible to facilitate prompt completion of full evaluations.

(4) *Referral by a parent.* A parent may submit a request for an evaluation if they suspect their child has a disability. The CSC shall ensure any such request is placed in writing and signed by the requesting parent and shall, within 15 school days, review the request and any information provided by the parents regarding their concerns, confer with the child's teachers, and gather information related to the educational concerns. Following a review of the information, the CSC shall:

(i) Convene a conference among the parents, teachers, and one or more other members of the CSC to discuss the educational concerns and document their agreements. Following the discussion, the parents may agree that:

(A) The child's needs are not indicative of a suspected disability and other supports and accommodations will be pursued;

(B) Additional information is necessary and a pre-referral process will be initiated; or

(C) Information from the conference will be forwarded to the CSC for action on the parent's request for an evaluation.

(ii) Within 10 school days of receipt of information from the conference regarding the parents' request for evaluation, agree to initiate the preparation of an assessment plan for a full and comprehensive educational evaluation or provide written notice to the parent denying the formal evaluation.

(5) *Referral by a teacher.* (i) Prior to referring a child who is struggling academically or behaviorally to the CSC for assessment and evaluation and development of an IEP, the teacher shall identify the child's areas of specific instructional need and target instructional interventions to those needs using scientific, research-based interventions as soon as the areas of need become apparent.

(ii) If the area of specific instructional need is not resolved, the teacher shall initiate the pre-referral process involving other members of the school staff.

(iii) If interventions conducted during pre-referral fail to resolve the area of specific instructional need, the teacher shall submit a formal referral to the CSC.

(6) *Assessment and evaluation.* (i) A full and comprehensive evaluation of educational needs shall be conducted prior to eligibility determination and before an IEP is developed or placement is made in a special education program, subject to the provisions for incoming students transferring to a DoDEA school as set forth in paragraph (b)(3) of this section. When the school determines that a child should be evaluated for a suspected disability, the school will:

(A) Issue a prior written notice to the parents of the school's intention to evaluate and a description of the evaluation in accordance with paragraph (b)(19) of this section.

(B) Provide parents notice of procedural safeguards.

(C) Request that the parent execute a written consent for the evaluation in accordance with paragraph (b)(17) of this section.

(D) Make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(ii) The CSC shall ensure that the following elements are included in a full and comprehensive assessment and evaluation of a child:

(A) Screening of visual and auditory acuity.

(B) Review of existing school educational and health records.

(C) Observation in an educational environment.

(D) A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. The assessment plan shall include, as appropriate:

(*1*) An assessment of the nature and level of communication and the level of functioning academically, intellectually, emotionally, socially, and in the family.

(*2*) An assessment of physical status including perceptual and motor abilities.

(*3*) An assessment of the need for transition services for students 16 years and older.

(iii) The CSC shall involve the parents in the assessment process in order to obtain information about the child's strengths and needs and family concerns.

(iv) The CSC, where possible, shall conduct the evaluations in the geographic area where the child resides, and shall use all locally available community, medical, and school resources, including qualified examiners employed by the Military Departments, to accomplish the assessment and evaluation. At least one specialist with knowledge in each area of the suspected disability shall be a member of the multidisciplinary assessment team.

(v) The CSC must obtain parental consent, in accordance with IDEA and this part, before conducting an evaluation. The parent shall not be required to give consent for an evaluation without first being informed of the specific evaluation procedures that the school proposes to conduct.

(vi) The evaluation must be completed by the school within 45 school days following the receipt of the parent's written consent to evaluate in accordance with the school's assessment plan.

(vii) The eligibility determination meeting must be conducted within 10 school days after completion of the school's formal evaluation.

(viii) All DoD elements including the CSC and related services providers shall:

(A) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, which may assist in determining:

(*1*) Whether the child has a disability.

(*2*) The content of the child's IEP, including information related to enabling the child to be involved and progress in the general education curriculum or, for preschool children, to participate in appropriate activities.

(B) Not use any single measure or assessment as the sole criterion for determining whether a child has a disability or determining an appropriate educational program for the child.

(C) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(ix) The CSC and DoD related services providers shall ensure that assessment materials and evaluation procedures are:

(A) Selected and administered so as not to be racially or culturally discriminatory.

(B) Provided in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide and administer.

(C) Selected and administered to assess the extent to which the child with limited English proficiency has a disability and needs special education, rather than measuring the child's English language skills.

(D) Validated for the specific purpose for which they are used or intended to be used.

(E) Administered by trained and knowledgeable personnel in compliance with the instructions of the testing instrument.

(F) Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

(G) Administered to a child with impaired sensory, motor, or communication skills so that the results accurately reflect a child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills.

(x) As part of an initial evaluation and as part of any reevaluation, the CSC shall review existing evaluation data on the child, including:

(A) The child's educational records.

(B) Evaluations and information provided by the parents of the child.

(C) Current classroom-based, local, or system-wide assessments and classroom observations.

(D) Observations by teachers and related services providers.

(xi) On the basis of that review and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child has a particular category of disability or, in the case of a reevaluation of a child, whether the child continues to have such a disability.

(B) The present levels of academic achievement and related developmental and functional needs of the child.

(C) Whether the child needs special education and related services or, in the case of a reevaluation of a child, whether the child continues to need special education and related services.

(D) 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 and to participate, as appropriate, in the general education curriculum.

(xii) The CSC may conduct its review of existing evaluation data without a meeting.

(xiii) The CSC shall administer tests and other evaluation materials as needed to produce the data identified in paragraph (b)(6)(ii) and (xi) of this section.

(7) *Eligibility.* (i) The CSC shall:

(A) Require that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team including specialists with knowledge in each area of the suspected disability and shall receive input from the child's parent(s).

(B) Convene a meeting to determine eligibility of a child for special education and related services not later than 10 school days after the child has been assessed by the school.

(C) Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

(D) Determine whether the child is a child with a disability as defined by the IDEA and this part, and the educational needs of the child.

(E) Issue a written eligibility determination report, including a synthesis of evaluation findings, that documents a child's primary eligibility in one of the disability categories described in paragraph (g) of this section, providing a copy of the eligibility determination report to the parent.

(F) Determine that a child does NOT have a disability if the determinant factor is:

(*1*) Lack of appropriate instruction in essential components of reading;

(*2*) Lack of instruction in mathematics; or

(*3*) Limited English proficiency.

(ii) The CSC shall reevaluate the eligibility of a child with a disability every 3 years, or more frequently, if the child's educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation. School officials shall not reevaluate more often than once a year, unless the parents and the school officials agree otherwise.

(A) The scope and type of the reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation and the review of existing data.

(B) If the CSC determines that no additional data are needed to determine whether the child continues to be a child with a disability, the CSC shall, in accordance with paragraph (b)(19) of this section, provide prior written notice to the child's parents of:

(*1*) The determination that no additional assessment data are needed and the reasons for their determination.

(*2*) The right of the parents to request an assessment to determine whether the child continues to have a disability and to determine the child's educational needs.

(C) The CSC is not required to conduct assessments for the purposes described in paragraph § 57.6(b)(7)(ii)(B), unless requested to do so by the child's parents.

(iii) The CSC shall evaluate a child in accordance with paragraph (b)(7)(ii) of this section before determining that the child no longer has a disability.

(iv) The CSC is not required to evaluate a child before the termination of the child's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for FAPE.

(v) When a child's eligibility has terminated due to graduation or exceeding the age of eligibility, the DoDEA school must provide the child, or the parent if the child has not yet reached the age of majority or is otherwise incapable of providing informed consent, with a summary of the child's academic achievement and functional performance.

(A) The summary of performance must be completed during the final year of a child's high school education.

(B) The summary must include:

(*1*) Child's demographics.

(*2*) Child's postsecondary goal.

(*3*) Summary of performance in the areas of academic, cognitive, and functional levels of performance to include the child's present level of performance, and the accommodations, modifications, and assistive technology that were essential in high school to assist the student in achieving maximum progress.

(*4*) Recommendations on how to assist the child in meeting the child's post-secondary goals.

(8) *IEP*—(i) *IEP development.* (A) DoDEA shall ensure that the CSC develops and implements an IEP to provide FAPE for each child with a disability who requires special education and related services as determined by the CSC. An IEP shall be in effect at the beginning of each school year for each child with a disability eligible for special education and related services under the IDEA and this part.

(B) In developing the child's IEP, the CSC shall consider:

(*1*) The strengths of the child.

(*2*) The concerns of the parents for enhancing the education of their child.

(*3*) The results of the initial evaluation or most recent evaluation of the child.

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

(ii) *IEP development meeting.* The CSC shall convene a meeting to develop the IEP of a child with a disability. The meeting shall:

(A) Be scheduled within 10 school days from the eligibility meeting following a determination by the CSC that the child is eligible for special education and related services.

(B) Include as participants:

(*1*) An administrator or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education and is knowledgeable about the general education curriculum and available resources.

(*2*) Not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment).

(*3*) Not less than one special education teacher or, where appropriate, not less than one special education provider of such child.

(*4*) The child's parents.

(*5*) An EIS coordinator or other representative of EIS, if the child is transitioning from EIS.

(*6*) The child, if appropriate.

(*7*) A representative of the evaluation team who is knowledgeable about the evaluation procedures used and can interpret the instructional implications of the results of the evaluation.

(*8*) Other individuals invited at the discretion of the parents or school who have knowledge or special expertise regarding the child or the IDEA, including related services personnel, as appropriate.

(iii) *IEP content.* The CSC shall include in the IEP:

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

(*1*) How the child's disability affects involvement and progress in the general education curriculum, or

(*2*) For preschoolers, how the disability affects participation in appropriate activities.

(*3*) For children with disabilities who take an alternate assessment, a description of short-term objectives.

(B) A statement of measurable annual goals including academic and functional goals designed to meet:

(*1*) The child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum.

(*2*) Each of the child's other educational needs resulting from his or her disability.

(C) A description of how the child's progress toward meeting the annual goals shall be measured, and when periodic progress reports will be provided to the parents.

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

(*1*) Advance appropriately toward attaining the annual goals.

(*2*) Be involved in and make progress in the general education curriculum and participate in extracurricular and other non-academic activities.

(*3*) Be educated and participate with other children who may or may not have disabilities.

(E) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in non-academic activities.

(F) A statement of any individualized appropriate accommodations necessary to measure the child's academic achievement and functional performance on system-wide or district-wide assessments. If the CSC determines that the child shall take an alternate assessment of a particular system-wide or district-wide assessment of student achievement (or part of an assessment), a statement of why:

(*1*) The child cannot participate in the regular assessment.

(*2*) The particular alternate assessment selected is appropriate for the child.

(G) Consideration of the following special factors:

(*1*) Assistive technology devices and services for all children.

(*2*) Language needs for the child with limited English proficiency.

(*3*) Instruction in Braille and the use of Braille for a child who is blind or visually impaired, unless the CSC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille) that instruction in Braille or the use of Braille is not appropriate for the child.

(*4*) Interventions, strategies, and supports including positive behavioral interventions and supports to address behavior for a child whose behavior impedes his or her learning or that of others.

(*5*) Language and communication needs, and in the case of a child who is deaf or hard of hearing, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's communication mode.

(H) A statement of the amount of time that each service shall be provided to the child, including the date for beginning of services and the anticipated frequency, number of required related services sessions to be provided by EDIS, location and duration of those services (including adjusted school day or an extended school year), and modifications.

(I) A statement of special transportation requirements, if any.

(J) Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a FAPE. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless the child is enrolled full-time in a separate facility or needs specially designed physical education, as prescribed in the child's IEP.

(iv) *Transition services.* (A) Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the CSC, and updated annually, thereafter, the IEP must include:

(*1*) Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills.

(*2*) The transition services, including courses of study, needed to assist the child in reaching postsecondary goals.

(B) Beginning at least 1 year before the child reaches the age of majority (18 years of age), except for a child with a disability who has been determined to be incompetent in accordance with Federal or State law, a statement that the child has been informed of those rights that transfer to him or her in accordance with this part.

(9) *Implementation of the IEP.* (i) The CSC shall ensure that all IEP provisions developed for any child entitled to an education by the DoDEA school system are fully implemented.

(ii) The CSC shall:

(A) Seek to obtain parental agreement and signature on the IEP before delivery of special education and related services in accordance with that IEP is begun.

(B) Provide a copy of the child's IEP to the parents.

(C) Ensure that the IEP is implemented as soon as possible following the IEP development meeting.

(D) Ensure the provision of special education and related services, in accordance with the IEP.

(E) Ensure that the child's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation, and that each teacher and provider is informed of:

(*1*) His or her specific responsibilities related to implementing the child's IEP.

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

(F) Review the IEP for each child periodically and at least annually in a CSC meeting to determine whether the child has been progressing toward the annual goals.

(G) Revise the IEP, as appropriate, and address:

(*1*) Any lack of progress toward the annual goals and in the general education curriculum, where appropriate.

(*2*) The results of any reevaluation.

(*3*) Information about the child provided by the parents, teachers, or related service providers.

(*4*) The child's needs.

(10) *Placement and Least Restrictive Environment (LRE).* (i) The CSC shall determine the educational placement of a child with a disability.

(ii) The educational placement decision for a child with a disability shall be:

(A) Determined at least annually.

(B) Made in conformity with the child's IEP.

(C) Made in conformity with the requirements of IDEA and this part for LRE.

(*1*) A child with a disability shall be educated, to the maximum extent appropriate, with children who are not disabled.

(*2*) A child with a disability shall not be removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education classroom.

(*3*) As appropriate, the CSC shall make provisions for supplementary services to be provided in conjunction with general education placement.

(*4*) Special classes, separate schooling, or other removal of a child with a disability from the general education environment shall occur only when the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(*5*) In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, assemblies, and study trips, the CSC shall ensure that a child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(iv) In determining the LRE for an individual student, the CSC shall:

(A) Consider the needs of the individual child as well as any potential harmful effect on the child or the quality of services that he or she needs.

(B) Make a continuum of placement options available to meet the needs of children with disabilities for special education and related services. The options on this continuum include the general education classroom, special classes (a self-contained classroom in the school), home bound instruction, or instruction in hospitals or institutions.

(v) When special schools and institutions may be appropriate, the CSC shall consider such placement options in coordination with the Area Special Education Office.

(vi) In the case of a disciplinary placement, school officials shall follow the procedures set forth in paragraph (b)(13) of this section.

(11) *Extended School Year (ESY) services.* ESY services must be provided only if a child's IEP team determines that the services are necessary for the provision of FAPE to the child. DoDEA may not:

(i) Limit ESY services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of ESY services.

(12) *Discipline*—(i) *School discipline.* All regular disciplinary rules and procedures applicable to children attending a DoDEA school shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, except that:

(A) A manifestation determination must be conducted for discipline proposed for children with disabilities in accordance with DoDEA disciplinary rules and regulations and paragraph (b)(12)(v) of this section, and

(B) The child subject to disciplinary removal shall continue to receive educational services in accordance with DoD disciplinary rules and regulations and paragraph (b)(12)(iv) of this section.

(ii) *Change of placement.* (A) It is a change of placement if a child is removed from his or her current placement for more than 10 consecutive school days or for a series of removals that cumulates to more than 10 school days during the school year that meets the criteria of paragraph (b)(12)(ii)(C) of this section.

(B) It is not a change of placement if a child is removed from his or her current academic placement for not more than 10 consecutive or cumulative days in a school year for one incident of misconduct. A child can be removed from the current educational placement for separate incidents of misconduct in the same school year (as long as those removals do not constitute a change of placement under IDEA) to the extent such a disciplinary alternative is applied to children without disabilities.

(C) If a child has been removed from his or her current placement for more than 10 days in a school year, but not more than 10 consecutive school days, the CSC shall determine whether the child has been subject to a series of removals that constitute a pattern. The determination is made on a case-by-case basis and is subject to review by a hearing officer in accordance with the provisions of paragraph (d)(5) of this section. The CSC will base its determination on whether the child has been subjected to a series of removals that constitute a pattern by examining whether:

(*1*) The child's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals, and;

(*2*) Additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(D) On the date the decision is made to remove a child with a disability because of misconduct, when the removal would change the child's placement, the school must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (b)(19) of this section.

(iii) *Alternate educational setting determination, period of removal.* School personnel may remove a child with a disability for misconduct from his or her current placement:

(A) To an appropriate interim alternate educational setting (AES), another setting, or suspension for not more than 10 consecutive school days to the extent those alternatives are applied to children without disabilities (for example, removing the child from the classroom to the school library, to a different classroom, or to the child's home), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as the CSC has determined that those removals do not constitute a pattern in accordance with paragraphs (b)(12)(ii) and (b)(12)(iv)(C) of this section; or

(B) To an AES determined by the CSC for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child, at school, on school-provided transportation, on school premises, or at a school-sponsored event:

(*1*) Carries a weapon or possesses a weapon;

(*2*) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or

(*3*) Has inflicted serious bodily injury upon another person; or

(C) To an AES determined by the CSC, another setting or suspension for more than 10 school days, where the behavior giving rise to the violation was determined by the CSC not to be a manifestation of the child's disability, in accordance with (b)(12)(v) of this section.

(D) After an expedited hearing if school personnel believe that returning the child to his or her current educational placement is substantially likely to cause injury to the child or to others.

(iv) *Required services during removal.* (A) If a child with a disability is removed from his or her placement for 10 cumulative school days or less in a school year, the school is required only to provide services comparable to the services it provides to a child without disabilities who is similarly removed.

(B) If a child with a disability is removed from his or her placement for more than 10 school days, where the behavior that gave rise to the violation of the school code is determined in accordance with paragraph (b)(12)(v) of this section not to be a manifestation of the child's disability, or who is removed under paragraph (b)(12)(iii)(B) of this section irrespective of whether the behavior is determined to be a manifestation of the child's disability, the school must:

(*1*) Continue to provide the child with the educational services as identified by the child's IEP as a FAPE so as to enable the child to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

(C) If a child with a disability has been removed for more than 10 cumulative school days and the current removal is for 10 consecutive school days or less, then the CSC must determine whether the pattern of removals constitutes a change of placement in accordance with paragraph (b)(12)(ii) of this section.

(*1*) If the CSC determines the pattern of removals is NOT a change of placement, then the CSC must determine the extent to which services are needed to enable the child to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(*2*) If the CSC determines that the pattern of removals IS a change of placement, then the CSC must conduct a manifestation determination.

(v) *Manifestation determination and subsequent action by CSC and school personnel.* (A) A principal must give the notice required and convene a manifestation determination meeting with the CSC within 10 school days of recommending, in accordance with DoDEA Regulation 2051.1, a disciplinary action that would remove a child with disabilities for:

(*1*) More than 10 consecutive school days, or

(*2*) A period in excess of 10 cumulative school days when the child has been subjected to a series of removals that constitute a pattern.

(B) The manifestation CSC will review all relevant information in the child's file (including the IEP, any teacher observations, and any information provided by the sponsor or parent) and determine whether the misconduct was a manifestation of the child's disability.

(*1*) The misconduct must be determined to be a manifestation of the child's disability if it is determined the misconduct:

(*i*) Was caused by the child's disability or had a direct and substantial relationship to the child's disability; or

(*ii*) Was the direct result of the school's failure to implement the IEP.

(*2*) If the determination is made that the misconduct was a manifestation of the child's disability, the CSC must:

(*i*) Conduct a functional behavioral assessment, unless the school 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

(*ii*) Review any existing behavioral intervention or disciplinary plan and modify it, as necessary, to address the behavior; and

(*iii*) Revise the student's IEP or placement and delivery system to address the school's failure to implement the IEP and to ensure that the student receives services in accordance with the IEP.

(*3*) Unless the parent and school agree to a change of placement as part of the modification of the behavioral intervention plan, the CSC must return the child to the placement from which the child was removed:

(*i*) Not later than the end of 10 days of removal; or

(*ii*) Not later than the end of 45 consecutive school days, if the student committed a weapon or drug offense or caused serious bodily injury for which the student was removed to an AES.

(*4*) If the determination is made that the misconduct in question was the direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

(*5*) If the determination is made that the behavior is NOT a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as the procedures that would be applied to children without disabilities, and must:

(*i*) Forward the case and a recommended course of action to the school principal, who may then refer the case to a disciplinary committee for processing.

(*ii*) Reconvene the CSC following a disciplinary decision that would change the student's placement, to identify, if appropriate, an educational setting and delivery system to ensure the child receives services in accordance with the IEP.

(vi) *Appeals of school decision regarding placement or manifestation determination.* (A) The parent of a child with a disability who disagrees with any decision regarding placement or manifestation determination, or a school that believes maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing before a hearing officer by filing a petition in accordance with paragraph (d)(5) of this section.

(B) A hearing officer, appointed in accordance with paragraph (d) of this section, hears and makes a determination regarding an appeal. In making the determination the hearing officer may:

(*1*) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the authority of school personnel in accordance with this part or that the child's behavior was a manifestation of the child's disability; or

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

(C) At the end of the placement in the appropriate AES, the procedures for placement in an AES may be repeated,

with the consent of the Area Director, if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(D) When an appeal has been made by either the parent or the school, the child must remain in the interim AES pending the decision of the hearing officer or until the expiration of the specified time period, whichever occurs first, unless the parent and the DoDEA school system agree otherwise.

(13) *Children not yet determined eligible for special education.* (i) A child who has not been determined to be eligible for special education and related services and who is subject to discipline may assert any of the protections provided for in paragraph (b)(19) of this section if the school had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(ii) DoDEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

(A) The parent of the child expressed concern in writing to a teacher of the child, the school principal or assistant principal, or the school special education coordinator that the child was in need of special education and related services;

(B) The child presented an active IEP from another school;

(C) The parent of the child requested an evaluation of the child; or

(D) The teacher of the child or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the principal or assistant principal, the special education coordinator, or to another teacher of the child.

(iii) A school is deemed NOT to have knowledge that a child is a child with a disability if:

(A) The parent of the child has not allowed an evaluation of the child or the parent has revoked consent, in writing, to the delivery of the child's special education and related services, in accordance with this part; or

(B) The child has been evaluated and determined not to be a child with a disability.

(iv) Conditions that apply if there is no basis of knowledge that the child is a child with a disability.

(A) If a school has no basis of knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to non-disabled children who engage in comparable behaviors in accordance with paragraph (b)(12)(i) of this section.

(B) If a request is made for an evaluation of a child during the time period when the child is subjected to disciplinary measures:

(*1*) The evaluation must be expedited.

(*2*) Until the evaluation is completed, the child remains in his or her then current educational placement, which can include suspension or expulsion without educational services.

(v) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the school must provide special education and related services in accordance with an IEP.

(14) *Referral to and action by law enforcement and judicial authorities*—(i) *Rule of construction.* Nothing prohibits a school from reporting a crime threatened or committed by a child with a disability to appropriate authorities, or prevents military, host-nation, or State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal, host-nation, and State law to crimes committed or threatened by a child with a disability.

(ii) *Transmittal of records.* An agency reporting a crime in accordance with this paragraph may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is in accordance with 32 CFR part 285.

(15) *Children with disabilities who are placed in a non-DoDEA school or facility pursuant to an IEP.*

(i) Children with disabilities who are eligible to receive a DoDEA school education, but are placed in a non-DoD school or facility by DoDEA because a FAPE cannot be provided by DoD, shall have all the rights of children with disabilities who are enrolled in a DoDEA school.

(ii) A child with a disability may be placed at DoD expense in a non-DoD school or facility only if required by the IEP.

(iii) DoDEA school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoD school or facility should attend the meeting. If the representative cannot attend, the DoDEA school officials shall communicate in other ways to facilitate participation including individual or conference telephone calls. A valid IEP must document the necessity of the placement in a non-DoD school or facility. The IEP must:

(A) Be signed by an authorized DoDEA official before it becomes valid.

(B) Include a determination that the DoDEA school system does not currently have and cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(C) Include a determination that the non-DoD school or facility and its educational program and related services conform to the requirements of this part.

(iv) The DoD shall not be required to reimburse the costs of special education and related services if DoDEA made FAPE available in accordance with the requirements of the IDEA and a parent unilaterally places the child in a non-DoD school without the approval of DoDEA.

(A) Reimbursement may be ordered by a hearing officer if he or she determines that DoDEA had not made FAPE available in a timely manner prior to enrollment in the non-DoDEA school and that the private placement is appropriate.

(B) Reimbursement may be reduced or denied:

(*1*) If, at the most recent CSC meeting that the parents attended prior to removal of the child from the DoDEA school, the parents did not inform the CSC that they were rejecting the placement proposed by the DoDEA school to provide FAPE to their child, including stating their concerns and their intent to enroll their child in non-DoD school at DoD expense.

(*2*) If, at least 10 business days (including for this purpose any holidays that occur on a Monday through Friday) prior to the removal of the child from the DoDEA school, the parents did not give written notice to the school principal or CSC chairperson of the information described in paragraph (b)(15)(iv)(B)(*1*) of this section.

(*3*) If, the CSC informed the parents of its intent to evaluate the child, using the notice requirement described in paragraph (b)(6)(i) and paragraph (b)(19) of this section, but the parents did not make the child available; or

(*4*) Upon a hearing officer finding of unreasonableness with respect to actions taken by the parents.

(C) Reimbursement may not be reduced or denied for failure to provide the required notice if:

(*1*) The DoDEA school prevented the parent from providing notice;

(*2*) The parents had not received notification of the requirement that the school provide prior written notice required by paragraph (b)(19) of this section;

(*3*) Compliance would result in physical or emotional harm to the child; or

(*4*) The parents cannot read and write in English.

(16) *Confidentiality of the records.* The DoDEA school and EDIS officials shall maintain all student records in accordance with 32 CFR part 310.

(17) *Parental consent*—(i) *Consent requirements.* The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before:

(A) Initiation of formal evaluation procedures to determine whether the child qualifies as a child with a disability and prior to conducting a reevaluation;

(B) Initial provision of special education and related services.

(ii) *Consent for initial evaluation.* If the parent of a child does not provide consent for an initial evaluation or fails to respond to a request for consent for an initial evaluation, then DoDEA may use the procedures described in paragraph (d) of this section to pursue an evaluation of a child suspected of having a disability.

(A) Consent to evaluate shall not constitute consent for placement or receipt of special education and related services.

(B) If a parent declines to give consent for evaluation, DoDEA shall not be in violation of the requirement to conduct child-find, the initial evaluation, or the duties to follow evaluation procedures or make an eligibility determination and write an IEP as prescribed in this section.

(iii) *Consent for reevaluation.* The school must seek to obtain parental consent to conduct a reevaluation. If the parent does not provide consent or fails to respond to a request for consent for a reevaluation, then the school may conduct the reevaluation without parental consent if the school can demonstrate that it has made reasonable efforts to obtain parental consent and documented its efforts. The documentation must include a record of the school's attempts in areas such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls.

(B) Copies of correspondence sent to the parents and any responses received.

(C) Detailed records of visits made to the parents' home, place of employment or duty station, and the results of those visits.

(iv) *Consent for the initial provision of special education and related services.* The school that is responsible for making a FAPE available to a child with a disability under this part must seek to obtain informed consent from the parent of such child before providing special education and related services to the child. If the parent refuses initial consent for services, the DoDEA school:

(A) May not use the procedures described in paragraph (d) of this section (mediation and due process) to obtain agreement or a ruling that the special education and related services recommended by the child's CSC may be provided to the child without parental consent.

(B) Shall not be considered to be in violation of the requirement to make a FAPE available to the child for its failure to provide those services to the child for which parental consent was requested.

(C) Shall not be required to convene an IEP meeting or develop an IEP for the child.

(18) *Parent revocation of consent for continued special education and related services.* (i) Parents may unilaterally withdraw their children from further receipt of all special education and related services by revoking their consent for the continued provision of special education and related services to their children.

(ii) Parental revocation of consent must be in writing.

(iii) Upon receiving a written revocation of consent, the DoDEA school must cease the provision of special education and related services and must provide the parents prior written notice before ceasing the provision of services. The notice shall comply with the requirements of paragraph (b)(19) of this section and shall advise the parents:

(A) Of any changes in educational placement and services that will result from the revocation of consent.

(B) That the school will terminate special education and related services to the child on a specified date, which shall be within a reasonable time following the delivery of the written notice.

(C) That DoDEA will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services.

(D) That the DoDEA school will not be deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and will not be entitled to the IDEA discipline protections.

(E) That the parents maintain the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services and that their child will not receive special education and related services until eligibility has been determined.

(F) That the DoDEA school will not challenge, through mediation or a due process hearing, the revocation of consent to the provision of special education or related services.

(G) That while the school is not required to convene a CSC meeting or to develop an IEP for further provision of special education and related services, it is willing to convene a CSC meeting upon request of the parent prior to the date that service delivery ceases.

(iv) Revocation of consent for a particular service:

(A) Upon receiving a revocation of consent for a particular special education or related service, the DoDEA school must provide the parent prior written notice in accordance with the requirements of paragraph (b)(19) of this section.

(B) If parents disagree with the provision of a particular special education or related service and the school members of the CSC and the parents agree that the child would be provided a FAPE if the child did not receive that service, the child's IEP may be modified to remove the service.

(C) If the parent and the school members of the CSC disagree as to whether the child would be provided a FAPE if the child did not receive a particular service, the parent may use the mediation or due process procedures under this part to obtain a determination as to whether the service with which the parent disagrees is or is not appropriate to his or her child and whether it is necessary to FAPE, but the school may not cease the provision of a particular service.

(19) *Procedural safeguards*—(i) *Parental rights.* Parents of children, ages 3 through 21 inclusive, with disabilities must be afforded procedural safeguards with respect to the provision of FAPE which shall include:

(A) The right to confidentiality of personally identifiable information in accordance with Federal law and DoD regulations.

(B) The right to examine records and to participate in meetings with respect to assessment, screening, eligibility determinations, and the development and implementation of the IEP.

(C) The right to furnish or decline consent in accordance with this section.

(D) The right to prior written notice when the school proposes to initiate or change, or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a child with a disability.

(*1*) The notice shall include:

(*i*) A description of the action that is being proposed or refused.

(*ii*) An explanation of why the agency proposes or refuses to take the action.

(*iii*) A description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action.

(*iv*) A description of the factors that were relevant to the agency's proposal or refusal.

(*v*) A description of any other options considered by the CSC and the reasons why those options were rejected.

(*vi*) Each of the procedural safeguards that is available in accordance with the IDEA and this part.

(*vii*) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(*viii*) Dispute resolution procedures, including a description of mediation, how to file a complaint, due process hearing procedures, and applicable timelines.

(*2*) The notice must be provided in language understandable to a lay person and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(E) The right to obtain an independent educational evaluation (IEE) of the child.

(F) The right to timely administrative resolution of complaints.

(G) The availability of dispute resolution through the administrative complaint, mediation, and due process procedures described in paragraph (d) of this section with respect to any matter relating to the identification, evaluation, or educational placement of the child, or a FAPE for the child, age 3 through 21 years, inclusive.

(H) The right of any party aggrieved by the decision regarding a due process complaint to bring a civil action in a district court of the United States of competent jurisdiction in accordance with paragraph (d)(21) of this section.

(ii) *Procedural safeguards notice.* A DoDEA school shall not be required to give parents a copy of the procedural safeguards notice more than once a school year, except that a copy must be given to parents upon a request from the parents; upon initial referral for evaluation or parental request for evaluation; and upon receipt of the first due process complaint.

(A) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, including:

(*1*) Independent evaluation for children (3 through 21 years, inclusive).

(*2*) Prior written notice.

(*3*) Parental consent.

(*4*) Access to educational records.

(*5*) Dispute resolution procedures together with applicable timelines including:

(*i*) The availability of mediation.

(*ii*) Procedures for filing a due process complaint and the required time period within which a due process complaint must be filed.

(*iii*) The opportunity for the DoDEA school system to resolve a due process complaint filed by a parent through the resolution process.

(*iv*) Procedures for filing an administrative complaint and for administrative resolution of the issues.

(*6*) The child's placement during pendency of due process proceedings in accordance with paragraph (d)(18) of this section.

(*7*) Procedures for children (3 through 21 years, inclusive) who are subject to placement in an interim AES.

(*8*) Requirements for unilateral placement by parents of children in private schools at public expense.

(*9*) Due process hearings, including requirements for disclosure of evaluation results and recommendations.

(*10*) The right to bring a civil action in a district court of the United States in accordance with paragraph (d)(21) of this section, including the time period in which to file such action.

(*11*) The possibility of an award of attorney's fees to the prevailing party in certain circumstances.

(B) The procedural safeguards notice must be:

(*1*) Written in language understandable to the general public.

(*2*) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the procedural safeguards notice is not translated into the native language of the parent, then the DoDEA school system shall ensure that:

(*i*) The notice is translated orally or by other means for the parent in his or her native language or other mode of communication.

(*ii*) The parent understands the content of the notice.

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

(iii) *Independent Educational Evaluation (IEE)*—(A) *Obtaining an IEE.* The DoDEA school system shall provide to the parents, upon request for an IEE, information about the requirements to meet the DoDEA school system criteria, as set forth in paragraph (b)(19)(iii)(F) of this section, and identification of qualified resources available to meet the requirements of paragraph (b)(iii)(F)(2) of this section.

(B) *Right to IEE.* The parents of a child with a disability have a right to an IEE at the DoDEA school system expense if the parent disagrees with an evaluation obtained by the DoDEA school system, subject to paragraph (b)(19)(iii)(C) to (H) of this section.

(C) *Written request for IEE.* If a parent provides the DoDEA school system with a written request for an IEE funded by the school system, then the school system shall either:

(*1*) Agree to fund an appropriate IEE that meets the criteria the DoDEA school system would use for an initial evaluation of a child as set forth in paragraph (b)(19)(iii)(F) of this section, or

(*2*) Initiate a due process hearing in accordance with paragraph (d) of this section, without unnecessary delay, and demonstrate that its evaluation was appropriate under this part.

(*i*) If the DoDEA school system initiates a due process hearing and the final decision is that the school system's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.

(*ii*) If a parent requests an IEE, the DoDEA school system may ask for the parent's reason why he or she objects to the school system's evaluation. However, the parent may not be compelled to provide an explanation and the DoDEA school system may not unreasonably delay either agreeing to fund an IEE that meets DoDEA school system criteria or initiating a due process hearing to defend its evaluation.

(D) *Parent-initiated evaluations.* If the parent obtains an IEE funded by the school system or shares with the DoDEA school system an evaluation obtained at private expense:

(*1*) The results of the evaluation shall be considered by the DoDEA school if it meets the school system's criteria in any decision made with respect to the provision of FAPE to the child.

(*2*) The results may be presented by any party as evidence at a due process hearing under this section regarding that child.

(*3*) The DoDEA school system may not be required to fund an IEE that has been obtained by a parent if at a due process hearing initiated by either party and conducted under this section, the DoDEA school system demonstrates either that:

(*i*) The parentally obtained evaluation was not educationally appropriate or failed to meet agency criteria; or

(*ii*) The DoDEA school system's evaluation was appropriate.

(E) *Hearing officer order for evaluation.* A hearing officer may only order an IEE at the DoDEA school

system's expense as part of a due process hearing under this section if:

(*1*) The school system has failed to demonstrate its assessment was appropriate; or

(*2*) The school system has not already funded an IEE in response to a given school evaluation.

(F) *DoDEA school system criteria.* An IEE provided at the DoDEA school system's expense must:

(*1*) Conform to the requirements of paragraph (b)(6)(viii) and (ix) of this section.

(*2*) Be conducted, when possible, in the geographic area where the child resides utilizing available qualified resources, including qualified examiners employed by the Military Department, in accordance with (b)(6)(iv) of this part, unless the parent can demonstrate to the satisfaction of the DoDEA school system or in a due process hearing filed in accordance with paragraph (d) of this section, that the geographic limitation renders the IEE impossible.

(G) *Conditions.* Except for the criteria in paragraph (b)(19)(iii)(F) of this section, the DoDEA school system shall not impose conditions or timelines related to obtaining an IEE at the DoDEA school system expense.

(H) *Limitations.* A parent is entitled to only one IEE at DoDEA school system expense in response to a given DoDEA school system evaluation with which the parent disagrees.

(iv) *Placement during due process, appeal, or civil procedures.* While an impartial due process proceeding, appeal proceeding, or civil proceeding is pending, unless the DoDEA school system and the parent of the child agree otherwise in writing, the child shall remain in his or her current placement, subject to the disciplinary procedures prescribed in paragraph (b)(12) of this section.

(v) *Transfer of parental rights at age of majority.* (A) In the DoDEA school system, a child reaches the age of majority at age 18.

(B) When a child with a disability reaches the age of majority (except for a child with a disability who has been determined to be incompetent in accordance with Federal or State law) the rights afforded to the parents in accordance with the IDEA and this part transfer to the child.

(C) When a child reaches the age of majority, the DoDEA school shall notify the child and the parents of the transfer of rights.

(D) When a child with a disability who has not been determined to be incompetent, but who does not have the ability to provide informed consent with respect to his or her educational program reaches the age of majority, the DoD shall appoint a parent or the parents of the child to represent the educational interests of the child throughout the period of eligibility for special education services.

(c) *Procedures for provision of related services by the military departments to students with disabilities in a DoDDS*—(1) *Evaluation procedures.* (i) Upon request by a CSC, the responsible EDIS shall ensure that a qualified medical authority conducts or verifies a medical evaluation for use by the CSC in determining the medically related disability that results in a child's need for special education and related services, and shall oversee an EDIS evaluation used in determining a child's need for related services.

(ii) The medical or related services evaluation, including necessary consultation with other medical personnel, shall be supervised by a physician or other qualified healthcare provider.

(iii) The medical or related services evaluation shall be specific to the concerns addressed in the request from the CSC.

(iv) The EDIS shall provide to the CSC an evaluation report that responds to the questions posed in the original request for an evaluation. The written report shall include:

(A) Demographic information about the child, such as the child's name, date of birth, and grade level.

(B) Behavioral observation of the child during testing.

(C) Instruments and techniques used.

(D) Evaluation results.

(E) Descriptions of the child's strengths and limitations.

(F) Instructional implications of the findings.

(G) The impact of the child's medical condition(s), if applicable, on his or her educational performance.

(v) If the EDIS that supports the DoDDS school requires assistance to conduct or complete an evaluation, the EDIS shall contact the MTF designated by the Military Department with geographic responsibility for the area where the EDIS is located.

(vi) If EDIS determines that in order to respond to the CSC referral the scope of its assessment and evaluation must be expanded beyond the areas specified in the initial parental permission, EDIS must:

(A) Obtain parental permission for the additional activities.

(B) Complete its initial evaluation by the original due date.

(C) Notify the CSC of the additional evaluation activities.

(vii) When additional evaluation information is submitted by EDIS, the CSC shall review all data and determine the need for program changes and the reconsideration of eligibility.

(viii) An EDIS provider shall serve on the CSC when eligibility, placement, or requirements for related services that EDIS provides are to be determined.

(2) *IEP*—(i) EDIS shall be provided the opportunity to participate in the IEP meeting.

(ii) EDIS shall provide related services assigned to EDIS that are listed on the IEP.

(3) *Liaison with DoDDS.* Each EDIS shall designate a special education liaison officer to:

(i) Provide liaison between the EDIS and DoDDS on requests for evaluations and other matters within their purview.

(ii) Offer, on a consultative basis, training for school personnel on medical aspects of specific disabilities.

(iii) Offer consultation and advice as needed regarding the medical services provided at school (for example, tracheotomy care, tube feeding, occupational therapy).

(iv) Participate with school personnel in developing and delivering in-service training programs that include familiarization with various conditions that impair a child's educational endeavors, the relationship of medical findings to educational functioning, related services, and the requirements of the IDEA and this part.

(d) *Dispute resolution and due process procedures*—(1) *General.* This section establishes requirements for resolving disputes regarding the provision of EIS to an infant or toddler up to 3 years of age, or the identification, evaluation, or educational placement of a child (ages 3 through 21, inclusive), or the provision of a FAPE to such child in accordance with the IDEA and this part.

(2) *Conferences.* Whenever possible, parties are encouraged to resolve disputes through the use of conferences at the lowest level possible between the parents and EDIS or the DoDEA school.

(i) Within a DoDEA school, problems should be brought first to the teacher, then the school administrator, and then the district office.

(ii) At EDIS, problems should be brought first to the EDIS provider, then the EDIS program manager, and then the local MTF commander.

(3) *Administrative complaints.* (i) A complaint filed with the responsible agency, relating to the provision of services under the IDEA and this part, other than due process complaints filed in accordance with paragraph (d)(5) of

this section, is known as an administrative complaint.

(ii) An individual or organization may file an administrative complaint alleging issues relating to services required to be delivered under the IDEA and this part with:

(A) The Office of the Inspector General of a Military Department when the issue involves services or programs for infants and toddlers with disabilities, or related services provided by the Military Departments to children with disabilities.

(B) The DoDEA Director, Office of Investigations and Internal Review (OI&IR) when the issue involves the services or programs for children ages 3 through 21, inclusive that are under the direction or control of the DoDEA school system.

(iii) An administrative complaint alleging issues relating to services required to be delivered under the IDEA or this part must include:

(A) A statement that the Military Service or the DoDEA school system has violated a requirement of the IDEA or this part.

(B) The facts on which the statement is based.

(C) The signature and contact information for the complainant.

(D) If alleging violations with respect to specific children:

(*1*) The name of the school the child is attending.

(*2*) The name and address of the residence of the child.

(*3*) A description of the nature of the problem of the child, including facts relating to the problem.

(*4*) A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

(iv) An administrative complaint may not allege a violation that occurred more than 1 year prior to the date that the complaint is received.

(v) The complainant filing an administrative complaint alleging issues related to services required to be delivered under the IDEA or this part must forward a copy of the complaint to the DoDEA school or EDIS clinic serving the child at the same time the complainant files the complaint with the appropriate authority in paragraph (d)(3)(i) of this section.

(A) Upon receipt of the complaint, the Inspector General of the Military Department concerned will notify the Secretary of the Military Department concerned, and the OI&IR will notify the Director, DoDEA, of the complaint.

(B) Upon receipt of a complaint, the responsible Military Department Inspector General or the OCA shall, if warranted, promptly open an investigation consistent with its established procedures for investigating complaints.

(*1*) The investigation shall afford the complainant an opportunity to submit additional information about the allegations.

(*2*) The investigation shall afford the DoDEA school system or the Military Department an opportunity to:

(*i*) Respond to the complaint;

(*ii*) Propose a resolution to the complaint; or

(*iii*) If the parties are willing, voluntarily engage in mediation of the complaint.

(*3*) The investigation shall produce a report consistent with those the investigating agency routinely provides, shall determine whether its findings support the complaint, and shall state whether the DoDEA school system or the Military Department is violating a requirement of the IDEA or this part.

(vi) The findings and conclusions of the report of investigation related to the administrative complaint shall be made available to the complainant and members of the public in accordance with the standard operating procedures of the investigating activity and 32 CFR parts 285 and 310.

(A) The investigating activity shall provide a copy of the report to the Director, DoDEA and the Secretary of a Military Department concerned or in accordance with the investigating activity's protocols.

(B) The report shall be provided, to the extent practicable, within 60 days of initiating the investigation, unless extended by the complainant and the DoDEA school system or the Military Department.

(vii) The Secretary of the Military Department concerned or the Director, DoDEA shall resolve complaints within their respective area of responsibility when the Military Service or the DoDEA school system is found to have failed to provide appropriate services consistent with the requirements of the IDEA or this part. Remediation may include corrective action appropriate to address the needs of the child such as compensatory services, or monetary reimbursement where otherwise authorized by law.

(viii) When a complaint received under this section is also the subject of a due process complaint regarding alleged violations of rights afforded under the IDEA and this part, or contains multiple issues of which one or more are part of that due process complaint, the investigation activity shall set aside any issues alleged in the due process complaint until a hearing is concluded in accordance with the IDEA and this part. Any issue that is not part of the due process hearing must be resolved using the procedures of this section.

(ix) If an issue raised in a complaint filed under this section has been previously decided in a due process hearing involving the same parties:

(A) The due process hearing decision is binding on that issue.

(B) The Director, DoDEA or the Secretary of the Military Department concerned shall so inform the complainant.

(4) *Mediation.* (i) A parent, the Military Department concerned, or DoDEA may request mediation at any time, whether or not a due process petition has been filed, to informally resolve a disagreement on any matter relating to the provision of EIS to an infant or toddler (birth up to 3 years of age), or the identification, evaluation, or educational placement of a child (ages 3 through 21, inclusive), or the provision of a FAPE to such child.

(ii) Mediation must be voluntary on the part of the parties and shall not be used to deny or delay a parent's right to a due process hearing or to deny other substantive or procedural rights afforded under the IDEA.

(A) DoDEA school officials participate in mediation involving special education and related services; the cognizant Military Department participates in mediation involving EIS.

(B) The initiating party's request must be written, include a description of the dispute, bear the signature of the requesting party, and be provided:

(*1*) In the case of a parent initiating mediation, to:

(*i*) The local EDIS program manager in disputes involving EDIS; or

(*ii*) The school principal in disputes involving a DoDEA school.

(*2*) In the case of the school or EDIS initiating mediation, to the parent.

(C) Acknowledgment of the request for mediation shall occur in a timely manner.

(D) Agreement to mediate shall be provided in writing to the other party in a timely manner.

(iii) Upon agreement of the parties to mediate a dispute, the local EDIS or DoDEA school shall forward a request for a mediator to the Military Department or to DoDEA's Center for Early Dispute Resolution (CEDR), respectively.

(iv) The mediator shall be obtained from the Defense Office of Hearings and Appeals (DOHA) unless another qualified and impartial mediator is obtained by the Military Department or CEDR.

(A) Where DOHA is used, the DOHA Center for Alternate Dispute Resolution (CADR) shall provide the mediator from its roster of mediators qualified in special education disputes.

(B) Where the Military Department or DoDEA elects to secure a mediator through its own DoD Component resources, the mediator shall be selected from the Component's roster of mediators qualified in special education disputes, or by contract with an outside mediator duly qualified in special education disputes and who is trained in effective mediation techniques.

(v) The Military Department or DoDEA through CEDR shall obtain a mediator within 15 business days of receipt of a request for mediation, or immediately request a mediator from the Director, DOHA, through the DOHA CADR.

(vi) When requested, the Director, DOHA, through the CADR, shall appoint a mediator within 15 business days of receiving the request, unless a party provides written notice to the Director, DOHA that the party refuses to participate in mediation.

(vii) Unless both parties agree otherwise, mediation shall commence in a timely manner after both parties agree to mediation.

(viii) The parents of the infant, toddler, or child, and EDIS or the school shall be parties in the mediation. With the consent of both parties, other persons may attend the mediation.

(ix) Mediation shall be conducted using the following rules:

(A) The Military Department concerned shall bear the cost of the mediation process in mediations concerning EIS.

(B) DoDEA shall bear the cost of the mediation process in mediations concerning special education and related services.

(C) Discussions and statements made during the mediation process, and any minutes, statements or other records of a mediation session other than a final executed mediation agreement, shall be considered confidential between the parties to that mediation and are not discoverable or admissible in a due process proceeding, appeal proceeding, or civil proceeding under this part.

(D) Mediation shall be confidential. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(E) Either party may request a recess of a mediation session to consult advisors, whether or not present, or to consult privately with the mediator.

(F) The mediator shall ensure and the contract for mediation services shall require that any partial or complete resolution or agreement of any issue in mediation is reduced to writing, and that the written agreement is signed and dated by the parties, with a copy given to each party.

(x) Any written agreement resulting from the mediation shall state that all discussions that occurred during the mediation process and all records of the mediation other than a final executed agreement shall be confidential and may not be discoverable or admissible as evidence in any subsequent due process proceeding, appeal proceeding, or civil proceeding, and shall be legally binding upon the parties and enforceable in a district court of the United States.

(xi) All mediation sessions shall be held in a location that is convenient to both parties.

(xii) No hearing officer or adjudicative body shall draw any inference from the fact that a mediator or a party withdrew from mediation or from the fact that mediation did not result in settlement of a dispute.

(5) *Due process complaint procedures.* (i) Parents of infants, toddlers, and children who are covered by this part and the cognizant Military Department or DoDEA, are afforded impartial hearings and administrative appeals after the parties have waived or participated in and failed to resolve a dispute through:

(A) Mediation, in the case of an infant or toddler; or

(B) A resolution process, or mediation in lieu of the resolution process prior to proceeding to a due process hearing in the case of a child (ages 3 through 21 years, inclusive).

(ii) An impartial due process hearing is available to resolve any dispute concerning the provision of EIS to infants and toddlers with disabilities or with respect to any matter relating to the identification, evaluation, educational placement of, and the FAPE provided by the Department of Defense to children (ages 3 through 21, inclusive) who are covered by this part, in accordance with the IDEA and this part.

(A) Whenever the parents or the cognizant Military Department present a due process complaint (petition) in accordance with this part, an impartial due process hearing is available to resolve any dispute concerning the provision of EIS.

(B) When the parents of children ages 3 through 21 years, inclusive, or the cognizant Military Department or DoDEA, present a due process complaint (petition) in accordance with this part relating to any matter regarding the identification, evaluation, placement, or the provision of FAPE, the parties shall first proceed in accordance with the requirements for a statutory resolution process in accordance with this part, after which time an impartial due process hearing is available to resolve the dispute set forth by the complaint.

(iii) An expedited impartial due process hearing may be requested:

(A) By a parent when the parent disagrees with the manifestation determination or any decision regarding the child's disciplinary placement.

(B) By the school when it believes that maintaining a student in his or her current educational placement is substantially likely to result in injury to the student or others.

(iv) Any party to a special education dispute may initiate a due process hearing by filing a petition stating the specific issues that are in dispute. The initiating party is the ''petitioner'' and the responding party is the ''respondent.'' The petition itself will remain confidential, in accordance with applicable law, not be released to those not a party to the litigation and its Personally Identifiable Information shall be protected in accordance with the DoD Privacy Act.

(v) Petitioner and respondent are each entitled to representation by counsel at their own expense. The parent and child may choose to be assisted by a personal representative with special knowledge or training with respect to the problems of disabilities rather than by legal counsel.

(vi) To file a petition that affords sufficient notice of the issues and commences the running of relevant timelines, petitioners shall specifically include in the petition:

(A) The name and residential address of the child and the name of the school the child is attending or the location of the EDIS serving the child.

(B) A description of the nature of the problem of the child relating to the proposed or refused initiation or change including facts (such as who, what, when, where, how, why of the problem).

(C) A proposed resolution of the problem to the extent known and available to the petitioner at the time.

(D) The signature of the parent, or if the petitioner is DoDEA or a Military Department, an authorized representative of that petitioner, or of the counsel or personal representative for the petitioner, and his or her telephone number and mailing address.

(vii) When the cognizant Military Department or DoDEA petitions for a hearing, it shall additionally:

(A) Inform the parent of the 10 business-day deadline (or 5 school days in the case of an expedited hearing) for filing a response that specifically

addresses the issues raised in the petition.

(B) Provide the parent with a copy of this part.

(viii) A special rule applies for expedited hearing requests. The petitioner must state, as applicable to his or her petition:

(A) The disciplinary basis for the child's change in placement to an interim AES or other removal from the child's current placement.

(B) The reasons for the change in placement.

(C) The reasoning of the manifestation determination committee in concluding that a particular act of misconduct was not a manifestation of the child's disability.

(D) How the child's current educational placement is or is not substantially likely to result in injury to the child or others.

(ix) The petition or request for an expedited due process hearing must be delivered to:

(A) The Director, DOHA, by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, or email to *specialedcomplaint@osdgc.osd.mil.* Filing may also be made by hand delivery to the office of the Director, DOHA if approval from the Director, DOHA is obtained in advance of delivery.

(B) The respondent by mail, fax, email, or hand delivery.

(*1*) If the petitioner is a parent of a child (ages of 3 through 21, inclusive), or a child (in the event that rights have been transferred in accordance with paragraph (b)(19) of this section, the respondent is DoDEA and the petition must be delivered to and received by the principal of the school in which the child is enrolled, or if the child is enrolled in the Non-DoD School Program (NDSP) to the DoDEA General Counsel (*generalcounsel@hq.dodea.edu*).

(*2*) If the petitioner is the parent of an infant or toddler (birth up to 3 years of age), the respondent is the responsible Military Department and the petition must be delivered to and received by the EDIS manager.

(*3*) If the petitioner is the responsible Military Department or DoDEA, the petition must be delivered to and received by the parent of the child.

(C) Filing of the due process petition with DOHA is considered complete when received by DOHA.

(x) The timelines for requesting and conducting a due process hearing are:

(A) *Timelines for requesting a hearing.* A petitioner may not allege a violation that occurred more than 2 years before the date the petitioner knew, or should have known, about the alleged action that forms the basis of the complaint, unless the parent was prevented from requesting the hearing due to:

(*1*) Specific misrepresentation by DoDEA or EDIS that it had resolved the problem forming the basis of the complaint.

(*2*) The withholding of information by DoDEA or EDIS from the petitioning parent that was required to be provided to the parent in accordance with the IDEA and this part.

(B) *Timelines for conducting a due process hearing.* Except as provided in paragraph (d)(5)(x)(D) and (d)(8)(ii) of this section, a hearing officer shall issue findings of fact and conclusions of law not later than 50 business days:

(*1*) In a case involving EDIS, following the filing and service of a legally sufficient petition or amended petition in accordance with this section.

(*2*) In disputes involving a school and a child age 3 through 21, inclusive, following the filing and service of a legally sufficient petition or amended petition in accordance with this section and the hearing officer's receipt of notice that the 30-day resolution period concluded without agreement, the parties waived the resolution meeting, or the parties concluded mediation in lieu of the resolution process without reaching agreement.

(C) *Exceptions to the timelines for conduct of a hearing.* (*1*) When the hearing officer grants a request for discovery made by either party, as provided for in paragraph (d)(10) of this section, in which case the time required for such discovery does not count toward the 50 business days.

(*2*) When the hearing officer grants a specific extension of time for good cause in accordance with paragraph (d)(8) of this section.

(D) *Timeline for conducting an expedited hearing.* In the event of a petition for expedited hearing is requested, a DOHA hearing officer shall arrange for the hearing to be held not later than 20 school days (when school is in session) of the date the request is filed with DOHA, subject to the timeline for scheduling a resolution meeting and the 15 day resolution period requirements of this section. The hearing officer must make a determination within 10 school days after the hearing.

(6) *Responses and actions required following receipt of a petition or request for expedited hearing.* (i) Immediately upon receipt of the petition, the Director, DOHA, shall appoint a hearing officer to take charge of the case.

(A) The hearing officer shall immediately notify the parties of his or her appointment.

(B) Upon receipt of notice that a hearing officer is appointed, the parties shall communicate all motions, pleadings, or amendments in writing to the hearing officer, with a copy to the opposing party, unless the hearing officer directs otherwise.

(ii) Within 10 business days of receipt of the petition (5 school days when school is in session in the case of a petition for an expedited hearing), the respondent shall deliver a copy of the written response to the petitioner and file the original written response with the hearing officer. Filing may be made by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, by hand delivery if approved in advance by the hearing officer, or by email to *specialedcomplaint@osdgc.osd.mil.* If a hearing officer has not yet been appointed, the respondent will deliver the original written response to the Director, DOHA in accordance with paragraph (d)(5)(ix) of this section.

(iii) The respondent shall specifically address the issues raised in the due process hearing petition.

(iv) If the respondent is the cognizant Military Department or DoDEA, the response shall include:

(A) An explanation of why the respondent proposed or refused to take the action at issue in the due process complaint.

(B) A description of each evaluation procedure, assessment, record, or report the DoD Component used as the basis for the proposed or refused action.

(C) A description of the options that the respondent considered and the reasons why those options were rejected.

(D) A description of the other factors that are relevant to the respondent's proposed or refused action.

(v) The respondent may file a notice of insufficient petition within 15 business days of receiving a petition if the respondent wishes to challenge the sufficiency of the petition for failure to state the elements required by the IDEA. Within 5 business days of receiving a notice of insufficient petition, the hearing officer will issue a decision and will notify the parties in writing of that determination.

(vi) A response to the petitioner under (d)(6)(ii) of this section shall not be construed to preclude the respondent from asserting that the due process complaint was insufficient using the procedures available under (d)(6)(v) of this section.

(vii) Parties may amend a petition only if:

(A) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through the resolution process; or

(B) The hearing officer grants permission, except that the hearing officer may not grant such permission at any time later than 5 days before a due process hearing is scheduled to begin.

(viii) The filing of an amended petition resets the timelines for:

(A) The conduct of a resolution meeting and the resolution period relating to the amended petition, and

(B) All deadlines for responses and actions required following the receipt of the amended petition, and for conducting a due process hearing on the amended petition.

(7) *Statutory resolution process.* A resolution meeting shall be convened by DoDEA and a resolution period afforded, in accordance with this section, for any dispute in which a due process petition has been filed regarding the identification, evaluation, or educational placement, or the provision of FAPE for children ages 3 to 21, inclusive.

(i) Within 15 calendar days of receiving the parent's petition for due process (7 calendar days in the case of an expedited hearing), DoDEA, through the pertinent school principal or superintendent, shall convene a dispute resolution meeting, which must be attended by:

(A) The parents.

(B) A legal representative of the parents if desired by the parents.

(C) A DoDEA official designated and authorized by the District Superintendent or Area Director to exercise decision-making authority on behalf of DoDEA.

(D) A DoDEA legal representative, only if the parents are represented by counsel at the resolution meeting.

(E) The relevant members of the child's CSC who have specific knowledge of the facts identified in the petition.

(ii) The parties may agree to mediate in lieu of conducting a resolution meeting or in lieu of completing the resolution period. The resolution meeting need not be held if the parties agree in writing to waive the meeting or agree to use the mediation process.

(iii) Failure to convene or participate in resolution meeting.

(A) If DoDEA has offered to convene a resolution meeting and has been unable to obtain parental participation in the resolution meeting after making and documenting its reasonable efforts, DoDEA may, at the conclusion of the resolution period (30 days or 15 days in the case of an expedited hearing) request that a hearing officer dismiss the parent's due process complaint or request for an expedited due process hearing.

(B) If DoDEA fails to convene a resolution meeting within 15 days of receipt of a due process complaint or if it fails to participate in the resolution meeting, the parent may request the hearing officer to immediately convene the due process hearing without waiting for the 30-day resolution period to expire.

(iv) DoDEA shall have a 30-day resolution period, counted from the receipt of the complaint by the school principal, (15 days in the case of an expedited hearing request) within which to resolve the complaint to the satisfaction of the parents.

(v) The resolution period may be adjusted because of one of the following events:

(A) Both parties agree in writing to waive the resolution meeting.

(B) After the resolution meeting starts, but before the end of the applicable resolution period, the parties agree in writing that no agreement is possible and agree to waive the balance of the resolution period.

(C) Both parties agree in writing to continue the resolution meeting at the end of the applicable resolution period, but later the parent or the school withdraws from the resolution process.

(vi) If a partial or complete resolution to the dispute is reached at the resolution meeting, the parties must execute a written agreement that is:

(A) Signed by both the parents and a representative of the school with authority to bind the school to the terms of the agreement.

(B) Legally enforceable in a U.S. District Court of competent jurisdiction, unless the parties have voided the agreement within an agreement review period of 3 business days following the execution of the agreement.

(vii) Discussions held, minutes, statements, and other records of a resolution meeting, and any final executed resolution agreement are not presumed confidential and therefore are discoverable and admissible in a due process proceeding, appeal proceeding, or civil proceeding, except when the parties have agreed to confidentiality.

(viii) If DoDEA has not resolved the complaint to the satisfaction of the parents at the expiration of the resolution period or the adjusted resolution period, if applicable:

(A) DoDEA shall provide written notice to the hearing officer, copy to the parents, within 3 business days (1 business day in the case of an expedited hearing) of the expiration of the resolution period or adjusted resolution period that the parties failed to reach agreement.

(B) Upon receipt of that notification by the hearing officer, all of the applicable timelines for proceeding to a due process hearing under this section shall commence.

(ix) If the parties execute a binding written agreement at the conclusion of the resolution period, and do not subsequently declare it void during the 3-business day agreement review period, then:

(A) DoDEA shall provide written notice to the hearing officer, copy to the parents, at the conclusion of the agreement review period that the parties have reached an agreement for resolution of complaints set forth in the due process petition.

(B) Upon receipt of that notification by the presiding hearing officer, no due process hearing shall proceed on the issues resolved.

(8) *The due process hearing*—(i) *Purpose.* The purpose of the due process hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case.

(ii) *Hearing officer duties.* The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include, but are not limited to, the authority to:

(A) Determine the adequacy of pleadings.

(B) Decide whether to allow amendment of pleadings, provided permission is granted to authorize the amendment not later than 5 days before a due process hearing occurs.

(C) Rule on questions of timeliness and grant specific extension of time for good cause either on his or her own motion or at the request of either party.

(*1*) Good cause includes the time required for mediation in accordance with paragraph (d)(4) of this section where the parties have jointly requested an extension of time in order to complete mediation.

(*2*) If the hearing officer grants an extension of time, he or she shall identify the length of the extension and the reason for the extension in the record of the proceeding. Any such extension shall be excluded from the time required to convene a hearing or issue a final decision, and at the discretion of the hearing officer may delay other filing dates specified by this section.

(D) Rule on requests for discovery and discovery disputes.

(E) Order an evaluation of the child at the expense of the DoDEA school

system or the Military Department concerned.

(F) Rule on evidentiary issues.

(G) Ensure a full and complete record of the case is developed.

(H) Decide when the record in a case is closed.

(I) Issue findings of fact and conclusions of law.

(J) Issue a decision on substantive grounds based on a determination of whether the child received a FAPE. When the petition alleges a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(*1*) Impeded the child's right to a FAPE;

(*2*) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or

(*3*) Caused a deprivation of educational benefits.

(K) Order such relief as is necessary for the child to receive a FAPE or appropriate EIS, including ordering the DoDEA school system or the responsible Military Department to:

(*1*) Correct a procedural deficiency that caused a denial of a FAPE or appropriate EIS;

(*2*) Conduct evaluations or assessments and report to the hearing officer;

(*3*) Change the school-aged child's placement or order the child to an AES for up to 45 days;

(*4*) Provide EIS or specific school-age educational or related services to a child to remedy a denial of FAPE, including compensatory services when appropriate and in accordance with the current early intervention or educational program; or

(*5*) Placement of a school-aged child in an appropriate residential program for children with disabilities at DoD expense, when appropriate under the law and upon a determination that DoDEA has failed to provide and cannot provide an otherwise eligible child with a FAPE at the appropriate DoD facility.

(*i*) A residential program must be one that can address the specific needs of the child as determined by the DoDEA school.

(*ii*) The program should, whenever possible, be located near members of the child's family.

(9) *Attendees at the hearing.* Attendance at the hearing is limited to:

(i) The parents and the counsel or personal representative of the parents.

(ii) A representative of DoDEA or the EDIS concerned and the counsel representing DoDEA or the EDIS.

(iii) Witnesses for the parties, including but not limited to the professional employees of DoDEA or the EDIS concerned and any expert witnesses.

(iv) A person qualified to transcribe or record the proceedings.

(v) Other persons with the agreement of the parties or the order of the hearing officer, in accordance with the privacy interests of the parents and the individual with disabilities.

(10) *Discovery.* (i) Full discovery shall be available, with the Federal Rules of Civil Procedure, Rules 26–37, 28 U.S.C. appendix, serving as a guide to parties to a due process hearing or conducted in accordance with this part.

(ii) If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery. The hearing officer shall grant an order to accomplish discovery upon a showing that the document or information sought is relevant or reasonably calculated to lead to the discovery of admissible evidence. An order granting discovery, or compelling testimony or the production of evidence shall be enforceable by all reasonable means within the authority of the hearing officer, to include the exclusion of testimony or witnesses, adverse inferences, and dismissal or summary judgment.

(iii) Records compiled or created in the regular course of business, which have been provided to the opposing party at least 5 business days prior to the hearing, may be received and considered by the hearing officer without authenticating witnesses.

(iv) A copy of the written or electronic transcription of a deposition taken by a Military Department or DoDEA shall be made available by the Military Department or DoDEA without charge to the opposing party.

(11) *Right to an open hearing.* The parents, or child who has reached the age of majority, have the right to an open hearing upon waiving, in writing, their privacy rights and those of the individual with disabilities who is the subject of the hearing.

(12) *Location of hearing.* Subject to modification by the hearing officer for good cause shown or upon the agreement of the parties, the hearing shall be held:

(i) In the DoDEA school district attended by the child (ages 3 through 21, inclusive):

(ii) On the military installation of the EDIS serving infants and toddlers with disabilities; or

(iii) At a suitable video teleconferencing facility convenient for the parents of the child involved in the hearing and available for the duration of a hearing.

(13) *Witnesses and documentary evidence.* (i) At least 5 business days prior to a hearing, the parties shall exchange lists of all documents and materials that each party intends to use at the hearing, including all evaluations and reports. Each party also shall disclose the names of all witnesses it intends to call at a hearing along with a proffer of the anticipated testimony of each witness.

(ii) At least 10 business days prior to a hearing, each party must provide the name, title, description of professional qualifications, and summary of proposed testimony of any expert witness it intends to call at the hearing.

(iii) Failure to disclose documents, materials, or witnesses may result in the hearing officer barring their introduction at the hearing.

(iv) Parties must limit evidence to the issues pleaded, except by order of the hearing officer or with the consent of the parties.

(v) The rules of evidence shall be relaxed to permit the development of a full evidentiary record with the Federal Rules of Evidence, 28 U.S.C. appendix, serving as guide.

(vi) All witnesses testifying at the hearing shall be advised by the hearing officer that under 18 U.S.C. 1001, it is a criminal offense to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation to a department or agency of the U.S. Government as to any matter within the jurisdiction of that department or agency, and may result in a fine or imprisonment.

(vii) A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDEA school system or the Military Department concerned shall pay such expenses if a witness is called by the hearing officer.

(viii) The parties shall have the right to cross-examine witnesses testifying at the hearing.

(ix) The hearing officer may issue an order compelling a party to make a specific witness employed by or under control of the party available for testimony at the party's expense or to submit specific documentary or physical evidence for inspection by the hearing officer or for submission into the record on motion of either party or on the hearing officer's own motion.

(x) When the hearing officer determines that a party has failed to obey an order to make a specific witness available for testimony or to submit specific documentary or physical evidence in accordance with the hearing

officer's order, and that such failure is in knowing and willful disregard of the order, the hearing officer shall so certify as a part of the written record in the case and may order appropriate sanctions.

(14) *Transcripts.* (i) A verbatim written transcription of any deposition taken by a party shall be provided to the opposing party in hardcopy written format or as attached to an electronic email with prior permission of the recipient. If a Military Department or DoDEA takes a deposition, the verbatim written transcript of that deposition shall be provided to the parent(s) without charge.

(ii) A verbatim written transcription of the due process hearing shall be arranged by the hearing officer and shall be made available to the parties in hardcopy written format, or as an attachment to an electronic email, with prior permission of the recipient, on request and without cost to the parent(s), and a copy of the verbatim written transcript of the hearing shall become a permanent part of the record

(15) *Hearing officer's written decision.* (i) The hearing officer shall make written findings of fact and conclusions of law and shall set forth both in a written decision addressing the issues raised in the due process complaint, the resolution of those issues, and the rationale for the resolution.

(ii) The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the transcript of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed.

(iii) The hearing officer shall file the written decision with the Director, DOHA, and additionally provide the Director, DOHA with a copy of that decision from which all personally identifiable information has been redacted.

(iv) The Director, DOHA, shall forward to parents and to the DoDEA or the EDIS concerned, copies, unredacted and with all personally identifiable information redacted, of the hearing officer's decision.

(v) The decision of the hearing officer shall become final unless a timely notice of appeal is filed in accordance with paragraph (d)(17) of this section.

(vi) The DoDEA or the EDIS concerned shall implement the decision as soon as practicable after it becomes final.

(16) *Determination without hearing.* (i) At the request of a parent of an infant or toddler, birth to 3 years of age, when EIS are at issue, or of a parent of a child age 3 through 21, inclusive, or child who has reached the age of majority, when special education (including related services) are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and conclusions of law and issue a written decision within the period fixed by paragraph (d)(5)(x) of this section.

(ii) DoDEA or the EDIS concerned may oppose a request to waive a hearing. In that event, the hearing officer shall rule on the request.

(iii) Documentary evidence submitted to the hearing officer in a case determined without a hearing shall comply with the requirements of paragraph (d)(13) of this section. A party submitting such documents shall provide copies to all other parties.

(17) *Appeal of hearing officer decision.* (i) A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal within 15 business days of receipt of the hearing officer's decision with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, by email to *specialedcomplaint@osdgc.osd.mil,* or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of delivery. The notice of appeal must contain the appealing party's certification that a copy of the notice of appeal has been provided to the other party by mail.

(ii) Within 30 business days of filing the notice of appeal, the appealing party shall file a written statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, by email to *specialedcomplaint@osdgc.osd.mil,* or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of filing. The appealing party shall deliver a copy to the other party by mail.

(iii) The non-appealing party shall file any reply within 20 business days of receiving the appealing party's statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board by mail to P.O. Box 3656, Arlington, Virginia 22203, by fax to 703–696–1831, by email to *specialedcomplaint@osdgc.osd.mil,* or by hand delivery to the office of the Chairperson, DOHA Appeal Board if approval from the Chairperson, DOHA Appeal Board is obtained in advance of filing The non-appealing party shall deliver a copy of the reply to the appealing party by mail.

(iv) Appeal filings with DOHA are complete upon transmittal. It is the burden of the appealing party to provide timely transmittal to and receipt by DOHA.

(v) The DOHA Appeal Board, shall issue a decision on all parties' appeals within 45 business days of receipt of the matter.

(vi) The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right, in accordance with the IDEA, to bring a civil action on the matters in dispute in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(vii) No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this section before seeking judicial review of a determination.

(18) *Maintenance of current educational placement.* (i) Except when a child is in an interim AES for disciplinary reasons, during the pendency of any proceeding conducted pursuant to this section, unless the school and the parents otherwise agree, the child will remain in the then current educational placement.

(ii) When the parent has appealed a decision to place a child in an interim AES, the child shall remain in the interim setting until the expiration of the prescribed period or the hearing officer makes a decision on placement, whichever occurs first, unless the parent and the school agree otherwise.

(19) *General hearing administration.* The Director, DOHA, shall:

(i) Exercise administrative responsibility for ensuring the timeliness, fairness, and impartiality of the hearing and appeal procedures to be conducted in accordance with this section.

(ii) Appoint hearing officers from the DOHA Administrative judges who shall:

(A) Be attorneys who are active members of the bar of the highest court of a State, U.S. Commonwealth, U.S. Territory, or the District of Columbia and permitted to engage in the active practice of law, who are qualified in

accordance with DoD Instruction 1442.02, ''Personnel Actions Involving Civilian Attorneys'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/144202p.pdf*).

(B) Possess the knowledge of and ability to:

(*1*) Understand the provisions of the IDEA and this part, and related Federal laws and legal interpretations of those regulations by Federal courts.

(*2*) Conduct hearings in accordance with appropriate, standard legal practice.

(*3*) Render and write decisions in accordance with the requirements of this part.

(C) Be disqualified from presiding in any individual case if the hearing officer:

(*1*) Has a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing.

(*2*) Is a current employee of, or military member assigned to, DoDEA or the Military Medical Department providing services in accordance with the IDEA and this part.

(20) *Publication and reporting of final decisions.* The Director, DOHA, shall ensure that hearing officer and appeal board decisions in cases arising in accordance with this section are published and indexed with all personally identifiable information redacted to protect the privacy rights of the parents who are parties in the due process hearing and the children of such parents, in accordance with 32 CFR part 310.

(21) *Civil actions.* Any party aggrieved by the final administrative decision of a due process complaint shall have the right to file a civil action in a district court of the United States of competent jurisdiction without regard to the amount in controversy. The party bringing the civil action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the date of the decision of the DOHA Appeal Board, to file a civil action.

(e) *DoD–CC on early intervention, special education, and related services*—(1) *Committee membership.* The DoD–CC shall meet at least annually to facilitate collaboration in early intervention, special education, and related services in the Department of Defense. The Secretary of Defense shall appoint representatives to serve on the DoD–CC who shall be full-time or permanent part-time government employees or military members from:

(i) USD(P&R), who shall serve as the Chair.

(ii) Secretaries of the Military Departments.

(iii) Defense Health Agency.

(iv) DoDEA.

(v) GC, DoD.

(2) *Responsibilities.* The responsibilities of the DoD–CC include:

(i) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers with disabilities and their families.

(ii) Provision of a FAPE, including special education and related services, for children with disabilities who are enrolled full-time in the DoDEA school system, as specified in their IEP.

(iii) Designation of a subcommittee on compliance to:

(A) Advise and assist the USD(P&R) in the performance of his or her responsibilities.

(B) At the direction of the USD(P&R), advise and assist the Military Departments and DoDEA in the coordination of services among providers of early intervention, special education, and related services.

(C) Monitor compliance in the provision of EIS for infants and toddlers and special education and related services for children ages 3 to 21, inclusive.

(D) Identify common concerns, facilitate coordination of effort, and forward issues requiring resolution to the USD(P&R).

(E) Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and related services through DoDEA or EIS through the Military Departments.

(F) Perform other duties as assigned by the USD(P&R), including oversight for monitoring the delivery of services consistent with the IDEA and this part.

(f) *Monitoring*—(1) *Program monitoring and oversight.* (i) The USD(P&R) shall monitor the implementation of the provisions of the IDEA and this part in the programs operated by the Department of Defense. The USD(P&R) will carry out his or her responsibilities under this section primarily through the DoD–CC.

(ii) The primary focus of monitoring shall be on:

(A) Improving educational results and functional outcomes for all children with disabilities.

(B) Ensuring the DoD programs meet the requirements of the IDEA and this part.

(iii) Monitoring shall include the following priority areas and any additional priority areas identified by the USD(P&R):

(A) Provision of a FAPE in the LRE and the delivery of early intervention services.

(B) Child-find.

(C) Program management.

(D) The use of dispute resolution including administrative complaints, due process and the mandatory resolution process, and voluntary mediation.

(E) A system of transition services.

(iv) The USD(P&R) shall develop quantifiable indicators in each of the priority areas and such qualitative indicators necessary to adequately measure performance.

(v) DoDEA and the Military Departments shall establish procedures for monitoring special services and reviewing program compliance in accordance with the requirements of this section.

(vi) By January 1 of each calendar year, the DoD–CC shall identify any additional information required to support compliance activities that will be included in the next annual compliance report to be submitted no later than September 30 of that year. The results of monitoring program areas described in paragraph (f)(1)(iii) of this section shall be reported in a manner that does not result in the disclosure of data identifiable to individual children.

(2) *Compliance reporting.* The Director, DoDEA, and the Military Departments shall submit reports to the DoD–CC not later than September 30 each year that summarize the status of compliance. The reports shall:

(i) Identify procedures conducted at headquarters and at each subordinate level, including on-site visits, to evaluate compliance with the IDEA and this part.

(ii) Summarize the findings and indicate the status of program compliance.

(iii) Describe corrective actions required of the programs that did not meet the requirements of the IDEA and this part and identify the technical assistance that was or shall be provided to ensure compliance.

(iv) Include applicable data on the operation of special education and early intervention in the Department of Defense. Data must be submitted in the format required by the DoD–CC to enable the aggregation of data across components. March 31 shall be the census date for counting children for the reporting period that begins on July 1 and ends on June 30 of the following year.

(3) *School level reporting.* (i) The reporting requirements for school aged children (3 through 21, inclusive) with disabilities shall also include:

(A) Data to determine if significant disproportionality based on race and ethnicity is occurring with respect to:

(*1*) The identification of school-aged children as children with disabilities including the identification of children as children with disabilities affected by a particular impairment described in paragraph (g) of this section.

(*2*) The placement of these children in particular educational settings.

(*3*) The incidence, duration, and type of disciplinary suspensions and expulsions.

(*4*) Removal to an interim AES, the acts or items precipitating those removals, and the number of children with disabilities who are subject to long-term suspensions or expulsions.

(*5*) The number and percentage of school-aged children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are:

(*i*) Receiving special education and related services.

(*ii*) Participating in regular education.

(*iii*) In separate classes, separate schools or facilities, or public or private residential facilities.

(B) The number of due process complaints requested, the number of hearings conducted, and the number of changes in placement ordered as a result of those hearings.

(C) The number of mediations held and the number of settlement agreements reached through such mediations.

(ii) For each year of age from age 16 through 21, children who stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma) or other reasons, and the reasons why those children stopped receiving special education and related services.

(4) *Early intervention reporting.* The reporting requirements for infants and toddlers with disabilities shall also include:

(i) Data to determine if significant disproportionality based on race, gender, and ethnicity is occurring with respect to infants and toddlers with disabilities who:

(A) Received EIS by criteria of developmental delay or a high probability of developing a delay.

(B) Stopped receiving EIS because of program completion or for other reasons.

(C) Received EIS in natural environments.

(D) Received EIS in a timely manner as defined in paragraph (a) of this section.

(ii) The number of due process complaints requested and the number of hearings conducted.

(iii) The number of mediations held and the number of settlement agreements reached through such mediations.

(5) *USD(P&R) oversight.* (i) On behalf of the USD(P&R), the DoD–CC shall make or arrange for periodic visits, not less than annually, to selected programs to ensure the monitoring process is in place; validate the compliance data and reporting; and address select focus areas identified by the DoD–CC and priority areas identified in paragraph (f)(1) of this section. The DoD–CC may use other means in addition to periodic visits to ensure compliance with the requirements established in this part.

(ii) The DoD–CC shall identify monitoring team members to conduct monitoring activities.

(iii) For DoD–CC monitoring visits, the Secretaries of the Military Departments shall:

(A) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which they are responsible.

(B) Provide necessary travel funding and support for their respective team members.

(C) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(D) Promptly implement monitoring teams' recommendations concerning early intervention and related services for which the Secretary concerned has responsibility, including those to be furnished through an inter-Service agreement.

(iv) For DoD–CC monitoring visits, the Director, DoDEA, shall:

(A) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which he or she is responsible.

(B) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(C) Promptly implement monitoring teams' recommendations concerning special education and related services for which the DoDEA school system concerned has responsibility.

(v) The ASD(HA) shall provide technical assistance to the DoD monitoring teams when requested.

(vi) The GC, DoD shall:

(A) Provide legal counsel to the USD(P&R), and, where appropriate, to DoDEA, monitored agencies, and monitoring teams regarding monitoring activities conducted pursuant to this part.

(B) Provide advice about the legal requirements of this part and Federal law to the DoDEA school systems, military medical commanders, military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

(g) *Types of disabilities in children ages 3 through 21.* A child may be eligible for services under paragraph (b) of this section if by reason of one of the following disabilities the child needs special education and related services.

(1) *Autism Spectrum Disorder.* A developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age 3. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

(2) *Deafness.* A hearing loss or deficit so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the child's educational performance adversely.

(3) *Deaf-blindness.* A combination of hearing and visual impairments causing such severe communication, developmental, and educational needs that the child cannot be accommodated in programs specifically for children with deafness or children with blindness.

(4) *Developmental delay.* A significant discrepancy, as defined and measured in accordance with paragraph (a)(4)(ii)(A) and confirmed by clinical observation and judgment, in the actual functioning of a child, birth through age 7, or any subset of that age range including ages 3 through 5, when compared with the functioning of a non-disabled child of the same chronological age in any of the following developmental areas: Physical, cognitive, communication, social or emotional, or adaptive development. A child determined to have a developmental delay before the age of 7 may maintain that eligibility through age 9.

(5) *Emotional disturbance.* A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational

performance and exhibits one or more of the following characteristics:

(i) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior or feelings under normal circumstances.

(iv) A general pervasive mood of unhappiness or depression.

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(vi) Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are emotionally disturbed.

(6) *Hearing impairment.* An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but is not included under the definition of deafness.

(7) *Intellectual disability.* Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior. This disability is manifested during the developmental period and adversely affects a child's educational performance.

(8) *Orthopedic impairment.* A severe orthopedic impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contractures.

(9) *Other health impairment.* Limited strength, vitality, or alertness including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems and that adversely affects a child's educational performance. Such impairments may include, but are not necessarily limited to, attention deficit disorder, attention deficit hyperactivity disorder, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, or diabetes.

(10) *Specific learning disability.* A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions, recognizing that they may have been otherwise labeled with terms such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. This term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disturbance; or environmental, cultural, or economic differences.

(11) *Speech or language impairments.* A communication disorder such as stuttering; impaired articulation; limited, impaired or delayed capacity to use expressive and/or receptive language; or a voice impairment that adversely affects a child's educational performance.

(12) *Traumatic brain injury.* An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment (or both) that adversely affects educational performance. Includes open or closed head injuries resulting in impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries that are induced by birth trauma.

(13) *Visual impairment, including blindness.* An impairment of vision that, even with correction, adversely affects a child's educational performance. Term includes both partial sight and blindness. DoD also recognizes that a child may be eligible for services under paragraph (b) if they demonstrate ''Multiple Disabilities'' which DoD defines as: ''Concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness, which is set forth as its own type of disability at § 57.6(g)(3).

Dated: June 17, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–15343 Filed 6–24–15; 8:45 am]

BILLING CODE 5001–06–P