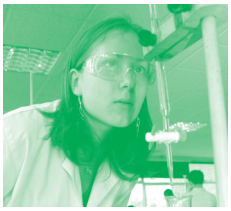
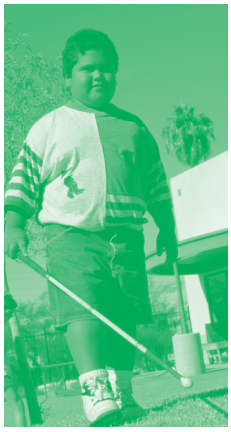
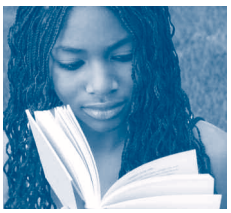
POLICIES GOVERNING SERVICES FOR CHILDREN WITH DISABILITIES

Amended – June 2010







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Effective Date: June 3, 2010

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NC 1500 GENERAL

NC 1500-1 Purposes and Applicability

NC 1500-1.1 Goal and purposes

The goal of the State is to provide appropriate educational opportunity to all children with disabilities who reside in North Carolina.

The purposes of this part are--

(a) To ensure that all children with disabilities, ages three through 21, have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist the local educational agencies, including state operated programs and charter schools, to provide for the education of children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d); 34 CFR 300.1)

NC 1500-1.2 Applicability of this part to State and local agencies

(a) Public agencies within the State. The provisions of this part--

  (1) Apply to all public agencies within the State that are involved in the education of children with disabilities, including:

    (i) The State educational agency (SEA).

    (ii) Local educational agencies (LEAs), including charter schools.

    (iii) Other State agencies and schools (such as the Department of Health and Human Services and State schools for children with deafness or children with blindness).

    (iv) State and local juvenile and adult correctional facilities; and

  (2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the IDEA.

(b) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the IDEA are given to children with disabilities--

  (1) Referred to or placed in private schools and facilities by that public agency; or

  (2) Placed in private schools by their parents under the provisions of NC 1501-8.

(Authority: 20 U.S.C. 1412; 34 CFR 300.2; 115C-106.1-.2)

NC 1500-2 Definitions

NC 1500-2.1 Adapted physical education

(a) Children with disabilities shall have equal access to the provision of physical education. Physical education includes the development of:

  (1) Physical and motor fitness;

  (2) Fundamental motor skills and patterns; and

  (3) Skills in individual and group games, sports, and activities (including intramural and life-time sports).

(b) If a child with a disability cannot participate in the regular physical education program, individualized instruction in physical education designed to meet the unique needs of the child shall be provided. Physical education may include:
   (1) Modified physical education,
   (2) Adapted/special physical education,
   (3) Movement education, and
   (4) Motor development.

(c) Modified physical education is appropriate for a child who can participate in the general physical education program with accommodations or modifications. These modifications can include changing rules, equipment, time limits, etc. It can also include supports such as a sign language interpreter.

(d) Adapted physical education (also called specially designed or special physical education) is instruction in physical education that is designed on an individual basis specifically to meet the needs of a child with a disability.

(Authority: 20 U.S.C. 1401; 34 CFR 300.39(2)(3))

NC 1500-2.2 Assistive technology device

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

(Authority: 20 U.S.C. 1401(1); 34 CFR 300.5)

NC 1500-2.3 Assistive technology service

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for use by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2); 34 CFR 300.6)

NC 1500-2.4 Child with a disability

(a) General

(1) Child with a disability means a child evaluated in accordance with NC 1503-2 through NC 1503-3 as having autism, deaf-blindness, deafness, developmental delay (applicable only to children ages three through seven), hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disability, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment (including blindness), and who, by reason of the disability, needs special education and related services.

(2) (i) If it is determined, through an appropriate evaluation under NC 1503-2 through NC 1503-3, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under IDEA.

(ii) If the only service required by the child is speech language, it is considered special education rather than a related service and the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1) Autism, sometimes called autism spectrum disorder,

(i) means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotypical movements, restricted interests, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. This impairment may include: Autistic Disorder, Pervasive Developmental Disorder-Not Otherwise Specified (Atypical Autism), Asperger's Disorder, Rett's Disorder, Childhood Disintegrative Disorder or all Pervasive Developmental Disorders.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability, as described in paragraph (b)(5) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (i) of this section are satisfied.

(2) Deaf-blindness means hearing and visual impairments that occur together, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects the child's educational performance.

(4) Developmental delay means a child aged three through seven, whose development and/or behavior is delayed or atypical, 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 of the delay, needs special education and related services.

(5) Serious emotional disability (hereafter referred to as emotional disability)

(i) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to make educational progress that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Serious emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (b)(5)(i) of this section.

(6) Hearing impairment means impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. The term "hard of hearing" may be used in this capacity.

(7) Intellectual disability means significantly subaverage general intellectual functioning that adversely affects a child's educational performance existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(8) Multiple disabilities means two or more disabilities occurring together (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), 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.

(9) Orthopedic impairment means a severe physical impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures, etc.).

(10) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome, etc.; and

(ii) Adversely affects a child's educational performance.

(11) Specific learning disability.

(i) General. Means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the impaired ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of serious emotional disturbance, or of environmental, cultural, or economic disadvantage.

(12) Speech or language impairment means-

(i) A communication disorder, such as an impairment in fluency, articulation, language, or voice/resonance that adversely affects a child's educational performance.

(ii) Language may include function of language (pragmatic), the content of language (semantic), and the form of language (phonologic, morphologic, and syntactic systems).
(iii) A speech or language impairment may result in a primary disability or it may be secondary to other disabilities.

(13) Traumatic brain injury means 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 a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(14) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. A visual impairment is the result of a diagnosed ocular or cortical pathology.

(Authority: 20 U.S.C. 1401(3); 1401(30); 34 CFR 300.8; 115C-106.3(1)(2))

NC 1500-2.5 Consent

Consent means that--

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D); 34 CFR 300.9)

NC 1500-2.6 Core academic subjects

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4); 34 CFR 300.10)

NC 1500-2.7 Day; business day; school day

(a) Day means calendar day unless otherwise indicated as a business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays.

(c) (1) School day means any day, including a partial day, that children are in attendance at school for

instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3; 34 CFR 300-11)

NC 1500-2.8 Early intervening services

The term early intervening services refers to the delivery of scientifically based instruction/interventions to students who demonstrate academic or behavioral difficulty. Instruction/interventions are intended for students who are not currently identified as needing special education but who need additional support to succeed in the classroom. Early intervening services also include the provision of professional development for teachers and staff to enable them to deliver appropriate instruction/intervention along with instruction in literacy and the use of adaptive and instructional software.

(Authority: 34 CFR 300.222; 300.646)

NC 1500-2.9 Elementary School

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6); 34 CFR 300.13)

NC 1500-2.10 Equipment

Equipment means--

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7); 34 CFR 300.14)

NC 1500-2.11 Evaluation

(a) General

Evaluation means procedures used in accordance with NC 1503-2 through NC 1503-3 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to the initial placement of a student with a disability in a special education program. Eligibility of children must be determined by using multiple sources of data and must not be dependent upon single test scores. Evaluation procedures may include, but are not limited to, observations, interviews, behavior checklists, structured interactions, play assessment, adaptive and developmental scales, criterion-referenced and norm referenced instruments, clinical judgment, and

tests of basic concepts or other techniques and procedures as deemed appropriate by the professional(s) conducting the evaluations.
Note: The determination of needed screenings and evaluations is based upon the unique needs of the student and not solely on the requirements for the suspected disability category.

(b) Definitions of evaluations and screenings. Evaluations and screenings for determining eligibility for special educational services are defined as follows:

(1) Adaptive Behavior Evaluation
The adaptive behavior evaluation refers primarily to the effectiveness with which the individual generally meets the standards of personal independence and social responsibility expected of his/her age and cultural group. It has two major facets:

(i) the extent to which the individual is able to function independently; and

(ii) the extent to which he/she satisfactorily meets the culturally imposed demands of personal and social responsibility. Evaluations of adaptive behavior look at the total environment of the child. Adaptive behavior information shall be obtained from two sources, one of which must be the child's parent, as defined by NC 1500-2.24, unless attempts to gather parental input are not successful. Unsuccessful attempts to obtain adaptive behavior input from the parent must be documented. An adaptive behavior evaluation may be included as part of the psychological evaluation, and for preschool children, it also may be part of the educational evaluation. It must be conducted by professional personnel who are trained in the assessment of adaptive behavior and in the interpretation of the assessment results.

(2) Audiological Evaluation
An audiological evaluation is an examination by a licensed audiologist to determine auditory acuity, auditory perception, and amplification needs. Whenever possible, the evaluation shall include air conduction testing, bone conduction testing, acoustic immittance measures (e.g. tympanometry), speech reception, discrimination and/or perception testing with amplification and without amplification. When behavioral audiometric testing is not feasible or is unreliable, auditory brain stem responses and/or otacoustic emissions are to be used.

(3) Braille Skills Inventory/Learning Media Assessment
The inventory/assessment is an appraisal of the child's most efficient reading medium (Braille and/or print). Items to be considered may include, but are not limited to, noting the working distance from the page, reading rates and accuracy, visual fatigue, and tactile discrimination.

(4) Functional Vision Assessment
A functional vision assessment is an assessment conducted by a licensed teacher of children with visual impairments, or other qualified personnel that provides information on how a student uses vision in familiar and unfamiliar educational and functional settings. It is intended to inform about the impact of a vision condition on a student's learning.

(5) Educational Evaluation
An educational evaluation is an evaluation of a child's educational functioning in relation to his/her current educational program. The results of this evaluation are expressed in terms of both the child's academic and/or developmental strengths and needs. This evaluation must be comprehensive, using a full range of available instruments and observations, including diagnostic tests and other appropriate formal and informal measures, such as curriculum based measurement. An educational evaluation must be conducted by a licensed teacher or other appropriate professional, unless additional restrictions are defined by the authors of the evaluation instrument, and should measure the child's progress in learning and skill acquisition. If educational strengths and needs have been addressed and reported as part of other required evaluations (e.g. psychological evaluation), then no further educational evaluation is needed.

(6) Health Screening
Health screening may include, but is not necessarily limited to, as many of the following

areas as may be appropriate: vision screening, hearing screening, dental screening, review of health history, review of developmental milestones, assessment of physical growth and assessment of nutritional status. Health screening may be performed by a school nurse or other appropriately trained persons.

(7) Medical Evaluation
Evaluations in this area must be conducted by appropriately trained and/or licensed health professionals.

(8) Motor Screening
Motor screening includes reviewing written and verbal information, observing the child in a variety of settings and/or administering screening instruments to determine adequacy of motoric functioning and need for further evaluation. Persons who may screen motor skills are psychologists, specially trained teachers of children with disabilities including adapted physical education teachers, occupational therapists, physical therapists, and other health professionals.

(9) Motor Evaluation
A motor evaluation obtains and provides information to assess a student's current level of motoric functioning and any problems encountered in performing motor tasks. This information may be collected through review of educational and medical records; interviews with teachers, parents, and others, including the student; clinical observations; and the administration of formal testing instruments, procedures, and techniques. A motor evaluation should include, but is not limited to, as many of the areas listed below as may be appropriate:
(i) musculo-skeletal status;
(ii) neuromotor/neurodevelopmental status;
(iii) gross-motor development and coordination;
(iv) fine-motor development and coordination;
(v) sensory-motor skills;
(vi) visual-motor skills;
(vii) bilateral coordination;
(viii) postural control and balance skills;
(ix) praxis/motor planning skills;
(x) oral-motor skills; and
(xi) gait and functional mobility skills.
Motor evaluations are performed by physical therapists or occupational therapists. Oral-motor skills may be assessed by speech-language pathologists when appropriate.

(10) Observation
Observations of school aged children usually occur in the regular classroom and/or settings related to the area(s) of concern and must document areas of strength as well as areas of need. Observations of school aged children shall assess academic skills and functional skills, which includes behavior.
Observations of preschool children should occur in the natural environment; that is, the setting within the community where preschool children without disabilities usually are found (home, child care, preschool classes, Head Start, etc.) and must document areas of strength and areas which are the focus of concern. Observational data on preschool children may include interactions with persons and objects, and compliance with structure, taking into consideration age-appropriate expectations.
Observations may be conducted by a teacher (who is not the teacher of the child), social worker, program coordinator, school psychologist, related services provider or other involved professional.

(11) Ophthalmological or Optometric Evaluation
An ophthalmological or optometric evaluation is an evaluation by an ophthalmologist or optometrist to determine visual acuity and function and whether or not magnification is

needed.

(12) Otological Evaluation
An otological evaluation is an evaluation by a licensed otologist to determine the presence or absence of ear pathology and the need for medical treatment.

(13) Psychological Evaluation
A psychological evaluation includes those procedures utilized by a psychologist. The evaluation should include an assessment of cognitive functioning and may also include, but not be limited to, assessments of educational performance, social/emotional/behavioral functioning, and adaptive behavior. Procedures used by the psychologist may include formal and informal assessment measures, observations, interviews, and other techniques as deemed appropriate by the psychologist. The assessment of cognition may include intelligence, memory, reasoning, problem solving, attending, and processing. Where these instruments are clearly inappropriate as standardized, the psychologist should use his/her professional judgment about the selection of instruments for assessing the intellectual functioning of children. Psychological evaluations shall be performed by DPI or Board licensed psychologists. School psychologists employed by the public schools must be licensed by the State Department of Public Instruction. Psychologists contracting with schools on a private basis must be licensed as psychological associates or practicing psychologists by the North Carolina Psychology Board. When contracting with state agencies for psychological services, the local education agency's contract must be with the agency and not with the individual psychologist.

(14) Social/Developmental History
A social history documents normal and abnormal developmental and/or medical events and includes a review of information gathered during the screening process. For preschool children, a social history must include an assessment of family composition, support systems, stressors, and environment as they correlate with the child's need or special services. The history also must include the family's or caregiver's perspective about the child and the need for special services. The history may be obtained by a licensed social worker, special educator, psychologist, counselor, nurse, teacher or other appropriate persons.

(15) Speech-Language Screening
Speech-language screening quickly and reliably provides information in the areas of articulation, expressive and receptive language, voice and fluency for determining which students have communication within normal limits and which ones need to be referred for further evaluation.

(16) Speech-Language/Communication Evaluation
A speech-language evaluation includes the following aspects of speech-language: articulation, fluency, voice, and language (form, content, and function). A screening of areas not addressed in depth, including: hearing, articulation, language, voice, and fluency should be completed during every evaluation. A variety of assessment tools and strategies to gather relevant functional, developmental, and academic information must be used. Assessment instruments may include: interviews; curriculum-based dynamic assessment tools or criterion referenced tests; and norm referenced tests. Areas of assessment may also include augmentative communication and pragmatics, as appropriate. For a student to be considered for intervention, the student's speech, language, voice, or fluency must be determined to have an adverse effect on educational performance. A speech-language evaluation is conducted by a speech-language pathologist licensed by the State Department of Public Instruction and/or licensed by the State of North Carolina.

(17) Vocational Evaluation
Vocational evaluation is a process involving an interdisciplinary team approach in assessing an individual's vocational potential, training and work placement needs.

(Authority: 20 U.S.C. 1414(a)—(c); 34 CFR 300.15)

NC 1500-2.12 Excess costs

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

(a) Amounts received--
  (1) Under Part B of the IDEA;
  (2) Under Part A of Title I of the ESEA; and
  (3) Under Parts A and B of Title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8); 34 CFR 300.16)

NC 1500-2.13 Free appropriate public education

Free appropriate public education or FAPE means special education and related services that--

(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of IDEA;
(c) Include an appropriate preschool, elementary school, or secondary school education; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of NC 1503-4 and NC 1503-5.1.

(Authority: 20 U.S.C. 1401(9); 34 CFR 300.17; 115C-106.3(4))

NC 1500-2.14 Highly qualified special education teacher

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--
  (1) Include the requirements described in paragraph (b) of this section; and
  (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers.
  (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that--
    (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher;
    (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    (iii) The teacher holds at least a bachelor's degree.
  (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
    (i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in the State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
(2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(d) Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
(3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all requirements for a HOUSSE for regular education teachers--

(1) The State may develop a separate HOUSSE for special education teachers; and
(2) The standards described in paragraph (e)(1) of this section may include a single HOUSSE evaluation that covers multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under these Policies, nothing in this part shall be construed to create a right of action

on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under NC 1501-10 about staff qualifications with the SEA as provided for under these Policies.

(g) Applicability of definition to ESEA; and clarification of new special education teacher.
   (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
   (2) For purposes of NC 1500- 2.14(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under NC 1501-6.9.

(Authority: 20 U.S.C. 1401(10); 34 CFR 300.18)

NC 1500-2.15 Homeless children

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)) and means individuals who lack a fixed, regular, and adequate night-time residence and includes:

- Children and youths who are sharing housing of other persons due to loss of housing, economic hardship, or similar reason;
- Children and youths who are living in motels, hotels, temporary trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- Children and youths who are living in emergency or transitional shelters;
- Children and youths who are abandoned in hospitals or awaiting foster care placement;
- Children and youths who have a primary night-time residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children (as defined by public school law) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described above.

(Authority: 20 U.S.C. 1401(11); 34 CFR 300.19)

NC 1500-2.16 Individualized education program

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with NC 1503-4 through NC 1503-5.1.

(Authority: 20 U.S.C. 1401(14); 34 CFR 300.22; 115C-106.3(8))

NC 1500-2.17 Individualized education program team

Individualized education program team or IEP Team means a group of individuals consisting of an LEA representative, parent of a child with a disability, regular education teacher of the child, special education teacher of the child, and others as described in NC 1503-4.2 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B); 34 CFR 300.23; 115C-106.3(7))

NC 1500-2.18 Individualized family service plan

Individualized family service plan or IFSP has the meaning given the term in section 636 of IDEA.

(Authority: 20 U.S.C. 1401(15); 34 CFR 300.24)

NC 1500-2.19 Infant or toddler with a disability

Infant or toddler with a disability –

(a) Means an individual under three years of age who needs early intervention services because the individual -
   (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
   (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(Authority: 20 U.S.C. 1401(16) and 1432(5); 34 CFR 300.25)

NC 1500-2.20 Limited English proficient

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18); 34 CFR 300.27)

NC 1500-2.21 Least restrictive environment (LRE)

Least restrictive environment means that, to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412; 34 CFR 300.114; 115C-106.3(10))

NC 1500-2.22 Local educational agency

(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within the State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, or for a combination of school districts or counties as are recognized in the State as an administrative agency for its public elementary schools or secondary schools.
(b) Other public institutions or agencies. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law, including the Department of Health and Human Services, the Department of Correction, and the Department of Juvenile Justice and Delinquency Prevention.

(Authority: 20 U.S.C. 1401(19); 34 CFR 300.28; 115C-106.3(11))

NC 1500-2.23 Native language

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:
   (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
   (2) The language normally used by the child in the home or learning environment (to be used in all direct contact with a child, including evaluation of the child).

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20); 34 CFR 300.29)

NC 1500-2.24 Parent

(a) Parent means--
   (1) A biological or adoptive parent of a child;
   (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent (e.g. therapeutic foster parent);
   (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
   (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
   (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
   (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the ''parent'' of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ''parent'' for purposes of this section.

(Authority: 20 U.S.C. 1401(23); 34 CFR 300.30)

NC 1500-2.25 Parent training and information center

Parent training and information center means a center assisted under sections 671 or 672 of the IDEA. The Exceptional Children's Assistance Center (ECAC) is North Carolina's parent training and information center.

(Authority: 20 U.S.C. 1401(25); 34 CFR 300.31)

NC 1500-2.26 Personally identifiable

Personally identifiable means information that contains--
(a) The name of the child, the child's parent, or other family member;
(b) The address of the child;
(c) A personal identifier, such as the child's date of birth, social security number or student number; or
(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a); 34 CFR 300.32)

NC 1500-2.27 Public agency

Public agency includes the SEA, LEAs, and State-operated Programs (SOPs) that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11); 34 CFR 300.33)

NC 1500-2.28 Related services

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services include, but are not limited to, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools and parent counseling and training.
(b) Exception: services that apply to children with surgically implanted devices, including cochlear implants.
  (1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g. mapping), maintenance of the device, or the replacement of that device.
  (2) Nothing in paragraph (b)(1) of this section –
    (i) Limits the rights of the child with a surgically implanted device (e.g. cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE;
    (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain health and safety of the child, including breathing, nutrition, or operation of other bodily functions while the child is transported to and from school or is at school; or
    (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required by NC 1501-2.11.
(c) Individual related services terms defined. The terms used in this definition are defined as follows:
  (1) Audiology includes--
    (i) Identification of children with hearing loss;
    (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
    (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;
(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services, includes –
(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, and sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
(ii) Special interpreting services for children who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy means--
Student centered continuum of services provided by a licensed occupational therapist or a licensed and supervised occupational therapy assistant. These services assist a student to engage in meaningful and/or necessary occupations that allow a student to participate in and benefit from special education. These occupations may include student role/interaction skills, learning academics and process skills, personal care, play and recreation, written communication, and community integration and work. Occupational therapy services may include:
(i) Screening, evaluation, intervention, and documentation;
(ii) Assistance with occupational performance when impaired or lost;
(iii) Modification of environments (both human and physical) and tasks, and selection, design, and fabrication of assistive devices and other assistive technology to facilitate development, promote the acquisition of functional skills, and engagement in meaningful occupations;
(iv) Integration of occupational therapy interventions into a student's educational program to assist the student in participation and acquisition of goals;
(v) Collaboration with appropriate individuals to meet student's needs including transition planning; and
(vi) Provide education and information to families and school personnel to assist with planning and problem solving.

(7) Orientation and mobility services--
(i) Means services provided to children with blindness or visual impairment by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
(ii) Includes teaching students the following, as appropriate:
(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
(C) To understand and use remaining vision and distance low vision aids; and
(D) Other concepts, techniques, and tools.

(8) Parent counseling and training means--
- (i) Assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy means a continuum of services provided by a licensed physical therapist or a licensed and supervised physical therapy assistant. School-based physical therapy services are provided to develop and maintain performance levels, within an individual student's physical capabilities, for independent and safe access to educationally related activities. School based physical therapy is a related service, and is provided only as required to assist a child to benefit from special education. Physical therapy services may include:
- (i) Development and maintenance of student's functional ability to participate in and benefit from his/her special education program;
- (ii) Modification and adaptation of the student's physical environment;
- (iii) Provision of training for school personnel;
- (iv) Communication and/or education of the student's teachers and family;
- (v) Communication with state and community agencies; and
- (vi) Involvement in total program planning for children with disabilities, including transition planning.

(10) Psychological services includes--
- (i) Administering psychological tests, educational tests, and other assessment procedures such as observations and interviews, in order to determine a student's strengths and educational, social, behavioral, and/or developmental needs; for preschool children psychological assessment may include administering psychological tests and/or criterion referenced, curriculum-based and other educational tests, as well as conducting assessment procedures such as observations, interviews, structured interactions, and play assessments as deemed appropriate by the psychologist;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about a child's behavior and environmental conditions relating to learning and development;
- (iv) Consulting with parents, teachers, and other school personnel in planning school programs and services to meet the identified needs of children, including but not limited to, placement, effective learning/teaching strategies, and personal and social skills;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents;
- (vi) Referring children and families to community agencies and services when appropriate;
- (vii) Screening and early identification of children with disabilities;
- (viii) Developing strategies for the prevention of learning and behavior problems; and
- (ix) Assisting in developing positive behavioral strategies.

(11) Recreation includes--
- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.

(12) Rehabilitation counseling services means 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 a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq*.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) Social work services in schools includes–
- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes--
- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation of communication impairments, including form, content, and function of language; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) Transportation includes--
- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26); 34 CFR 300.34; 115C-106.3(18))

NC 1500-2.29 Reevaluation

Reevaluation is the process of examining existing data, and if determined necessary, gathering additional data in order to:
- Determine continuing eligibility for special education;
- Assure that the continuing individual needs of a student are identified; and
- Assure appropriate educational programming (review and/or revision of IEP).

(Authority: 20 U.S.C. 1414(a)(2); 34 CFR 300.303)

NC 1500-2.30 Screening

Screening may be used for the following purposes:

(a) Mass screenings are those screenings done with all students.

(b) Individual screenings, such as hearing, vision, and motor screenings, may be required as part of the evaluation process for eligibility for special education and related services.

(c) 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.

NC 1500-2.31 Scientifically based research

Scientifically based research

(a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(b) Includes research that:

(1) Employs systematic, empirical methods that draw upon observation or experiment;

(2) Involves rigorous data analyses that are to test the stated hypotheses and justify the general conclusions drawn;

(3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer opportunity to build systematically on their findings; and

(6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through comparably rigorous, objective, and scientific review.

(Authority: 20 U.S.C. 1411(e)(2)(c)(xi); 34 CFR 300.35)

NC 1500-2.32 Secondary School

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(27); 34 CFR 300.36)

NC 1500-2.33 Services plan

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 1501-6.3, and is developed and implemented in accordance with NC 1501-6.8 through NC 1501-6.10.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.37)

NC 1500-2.34 Special education

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including

(i) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section –

(i) Speech-language pathology services,

(ii) Travel training; and
(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:
(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
(2) Physical education means –
(i) The development of –
(A) Physical and motor fitness;
(B) Fundamental motor skills and patterns; and
(C) Skills in games and sports.
(ii) Includes special physical education, adapted physical education, movement education, and motor development.
(3) Specially designed instruction means adapting, as appropriate, to the needs of an eligible child under these Policies, the content, methodology, or delivery of instruction--
(i) To address the unique needs of the child that result from the child's disability; and
(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.
(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to –
(i) Develop an awareness of the environment in which they live; and
(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g. in school, in the home, at work, and in the community).
(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree

(Authority: 20 U.S.C.1401(29); 34 CFR 300.39)

NC 1500-2.35 State educational agency

State educational agency or SEA means the State board of education responsible for the State supervision of public elementary schools and secondary schools.

(Authority: 20 U.S.C. 1401(32); 34 CFR 300.41)

NC 1500-2.36 Supplementary aids and services

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extra-curricular and non-academic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the least restrictive environment requirements.

(Authority: 20 U.S.C. 1401(33); 34 CFR 300.42)

NC 1500-2.37 Transition services

(a) Transition services means a coordinated set of activities for a child with a disability that--

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
(2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--
    (i) Instruction;
    (ii) Related services;
    (iii) Community experiences;
    (iv) The development of employment and other post-school adult living objectives; and
    (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction; or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34); 34 CFR 300.43)

NC 1500-2.38 Universal design

Universal design means the design of products, instruction, assessments, or environments to be useable by all people to the greatest extent possible without the need for adaptations or specialized design.

(Authority: 20 U.S.C. 1401(35); 34 CFR 300.44)

NC 1500-2.39 Ward of the State

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--
    (1) A foster child;
    (2) A ward of the State; or
    (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in NC 1500-2.24.

(Authority: 20 U.S.C. 1401(36); 34 CFR 300.45)

NC 1501 STATE ELIGIBILITY

NC 1501-1 FAPE Requirements

NC 1501-1.1 Free appropriate public education (FAPE)

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of three through 21, including children with disabilities who have been suspended or expelled from school, as provided for in NC 1504-2.1(d). Any child with a disability who requires special education and related services and who has not graduated from high school is eligible to continue to receive a free appropriate public education until the end of the school year in which that child reaches the age of 22.

(b) FAPE for children beginning at age three.
- (1) Each LEA must ensure that--
  - (i) The obligation to make FAPE available to each eligible child residing in the LEA begins no later than the child's third birthday; and
  - (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with NC 1503-4.4(b).
- (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.
- (1) Each LEA must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
- (2) The determination that a child described in paragraph (a) of this section is eligible, must be made on an individual basis by the IEP team.

(d) FAPE for children incarcerated in local jail. Each LEA must ensure that FAPE is available to students with disabilities incarcerated in local jail who were eligible prior to their incarceration.

(Authority: 20 U.S.C. 1412(a)(1)(A); 34 CFR 300.101; 115C-107.1)

NC 1501-1.2 Exception to FAPE for certain ages

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
- (1) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under the IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility-
  - (A) Were not actually identified as being a child with a disability; and
  - (B) Did not have an IEP.
  - (ii) The exception in paragraph (a)(1)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--
    - (A) Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or
    - (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability.
- (2) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
  - (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice.

(3) As used in paragraphs (a)(2)(i) through (a)(2)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by NC 1506-1.1 is current and accurate.

(Authority: 20 U.S.C. 1412(a)(1)(B)-(C); 34 CFR 300.102; 115C-107.1)

NC 1501-2 Other FAPE Requirements

NC 1501-2.1 FAPE--methods and payments

(a) Each LEA may use whatever State, local, Federal, and private sources of support are available in the LEA to meet the requirements of this section. For example, if it is necessary to place a child with a disability in a residential facility, an LEA could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) The LEA must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(Authority: 20 U.S.C. 1401(8), 1412(a)(1); 34 CFR 300.103;115C-108.2)

NC 1501-2.2 Residential placement

(a) If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(b) When a private residential placement has been determined to be the most appropriate placement for a child with a disability, in-state residential programs should be the first consideration. The LEA should exhaust all possible in-state residential placement options before placing a child out-of-state. All children placed in out-of-district school settings are entitled to the same rights and procedural safeguards as provided to those children whose IEPs are implemented in the LEA.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B); 34 CFR 300.104)

NC 1501-2.3 Assistive technology

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's--

(1) Special education;

(2) Related services; or

(3) Supplementary aids and services.

(b) On a case-by-case basis, the use of school purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i); 34 CFR 300.105)

NC 1501-2.4 Extended school year services

(a) General.
  (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE.
  (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.
  (3) In implementing the requirements of this section, a public agency may not--
    (i) Limit extended school year services to particular categories of disability; or
    (ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that--
  (1) Are provided to a child with a disability--
    (i) Beyond the normal school year of the public agency;
    (ii) In accordance with the child's IEP; and
    (iii) At no cost to the parents of the child; and
  (2) The IEP team must determine that extended school year services are necessary for the provision of FAPE to an individual child by considering:
    (i) Whether the student regresses or may regress during extended breaks from instruction and cannot relearn the lost skills within a reasonable time; or
    (ii) Whether the benefits a student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during extended breaks from instruction; or
    (iii) Whether the student is demonstrating emerging critical skill acquisition ("window of opportunity") that will be lost without the provision of an educational program during extended breaks from instruction.

(Authority: 20 U.S.C. 1412(a)(1); 34 CFR 300.106)

NC 1501-2.5 Nonacademic services

(a) The LEA must take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(a)(1); 34 CFR 300.107)

NC 1501-2.6 Physical education

LEAs must comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
   (1) The child is enrolled full time in a separate facility; or
   (2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the goals should be drafted and monitored by individuals knowledgeable of the physical education curriculum. The LEA responsible for the education of the child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services.

(Authority: 20 U.S.C. 1412(a)(5)(A); 34 CFR 300.108)

NC 1501-2.7 Full educational opportunity goal (FEOG)

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities aged birth through 21 and a detailed timetable for accomplishing that goal. State law assigns the Department of Health and Human Services the responsibility for birth through two.

The LEA must have in effect policies and procedures to demonstrate that the LEA has established a goal of providing full educational opportunity to all children with disabilities aged three through 21 and a detailed timetable for accomplishing that goal.

(Authority: 20 U.S.C. 1412(a)(2); 34 CFR 300.109)

NC 1501-2.8 Program options

Each LEA must take steps to ensure that children with disabilities have available to them the variety of educational programs and services available to nondisabled children, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1); 34 CFR 300.110)

NC 1501-2.9 Child find

(a) General.
   (1) The LEA must have in effect policies and procedures that ensure that--
      (i) All children with disabilities three through 21 residing in the LEA, including children who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated;

(ii) All children with disabilities three through 21 parentally placed in a private school located in the LEA, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(iii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

(1) Developmental delay applies to children in North Carolina aged three through seven.

(2) An LEA is not required to adopt and use the term developmental delay for children within its jurisdiction.

(3) If an LEA uses the term developmental delay, it may be applied only to children aged three through seven.

(c) Other children in child find. Child find must also include--

(1) Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Timeline for responding to a notification made by person other than parent or LEA. Within thirty (30) days of receipt of written notification of concerns regarding a child, the LEA shall issue a written response to the child's parent. The response shall include either an explanation of reasons the LEA will not pursue the concerns or a date for a meeting in which the LEA and parent will review existing data and determine whether a referral for consideration of eligibility for special education is necessary. Such meeting must be held within a reasonable time.

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3); 34 CFR 300.111)

NC 1501-2.10 Individualized education program (IEP)

The LEA must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the IDEA, is developed, reviewed, and revised for each child with a disability in accordance with NC 1503-4 through NC 1503-5.1.

(Authority: 20 U.S.C. 1412(a)(4); 34 CFR 300.112)

NC 1501-2.11 Routine checking of hearing aids and external components of surgically implanted medical devices

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

(1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under the IDEA, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted device).

(Authority: 20 U.S.C. 1401(1), 1401(26)(B); 34 CFR 300.113)

NC 1501-2.12 Equal access to textbooks for all children and teachers

The LEAs shall use their State textbook funds to provide, to the same extent as is provided to nondisabled students, textbooks for students with disabilities. LEAs shall also, at a minimum, provide teachers of children with disabilities with the same teachers' editions provided to teachers of nondisabled students.

(Authority: Article 9 of Chapter 115C of the General Statutes, Section 7)

NC 1501-3 Least Restrictive Environment (LRE)

NC 1501-3.1 LRE requirements

(a) General.
  (1) Except as provided in NC 1501-3.5 (regarding children with disabilities in adult prisons), LEAs must have in effect policies and procedures to ensure that all LRE requirements contained in sections NC 1501-3.1 through NC 1501-3.7 are met.
  (2) Each LEA must ensure that--
    (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
    (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement – State and LEA funding mechanisms – The SEA or LEA may not use a funding mechanism which distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.114)

NC 1501-3.2 Continuum of alternative placements

(a) Each LEA must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
(b) The continuum required in paragraph (a) of this section must--
  (1) Include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and
  (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.
(c) For preschool children, the continuum required in paragraph (a) of this section includes:
  (1) Regular early childhood program;
  (2) Special education program provided in a separate class, separate school, residential facility;
  (3) Service provider location; or
  (4) Home instruction.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.115)

NC 1501-3.3 Placement decisions

In determining the educational placement of a child with a disability, including a preschool child with a disability, each LEA must ensure that--
(a) The placement decision--

(1) Is made by the IEP Team, which includes the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
(2) Conforms to LRE requirements;

(b) The child's placement on the continuum--
(1) Is determined at least annually; and
(2) Is based on the child's IEP;

(c) Unless the IEP of a child with a disability requires some other arrangement--
(1) The child is educated in the school that he or she would attend if nondisabled; and
(2) If the child cannot be educated in the school he or she would attend if nondisabled, the child is educated as close to the child's home as possible;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.116)

NC 1501-3.4 Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services set forth in NC 1501-2.5, each LEA must ensure that each child with a disability participates with nondisabled children in those extracurricular services and activities to the maximum extent appropriate to the needs of that child. The LEA must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.117)

NC 1501-3.5 Children in public or private institutions

Except as provided in NC 1501-9(d) (regarding agency responsibility for general supervision for some individuals in adult prisons) an LEA must ensure that the provision of FAPE in the least restrictive environment is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.118)

NC 1501-3.6 Technical assistance and training activities

The SEA and each LEA must carry out activities to ensure that teachers and administrators in all public agencies--

(a) Are fully informed about their responsibilities for implementing LRE requirements; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.119)

NC 1501-3.7 Monitoring activities

(a) The SEA must carry out activities to ensure that LEAs develop, review, and revise IEPs.

(b) If there is evidence that an LEA makes placements that are inconsistent with LRE requirements, the SEA must--
  (1) Review the LEA's justification for its actions; and
  (2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5); 34 CFR 300.120)

NC 1501-4 Additional Eligibility Requirements

NC 1501-4.1 Procedural safeguards

(a) General. The State must ensure that each LEA in the State meets the requirements of NC 1504-1 through NC 1504-2.7.
(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A); 34 CFR 300.121)

NC 1501-4.2 Evaluation

Children with disabilities must be evaluated in accordance with NC 1503-1 through NC 1503-3.

(Authority: 20 U.S.C. 1412(a)(7); 34 CFR 300.122)

NC 1501-4.3 Confidentiality of personally identifiable information

The State must ensure that LEAs protect the confidentiality of any personally identifiable information collected, used, or maintained.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.123)

NC 1501-4.4 Transition of children from Part C to preschool programs

The State and each LEA must ensure that--
(a) Children participating in early intervention programs assisted under Part C of the IDEA, and who are eligible and will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs.
(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or IFSP has been developed and is being implemented for the child.
(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency.

(Authority: 20 U.S.C. 1412(a)(9); 34 CFR 300.124)

NC 1501-5 Children in Private Schools

NC 1501-5.1 State responsibility regarding children in private schools

The State must ensure that LEAs, and if applicable, the SEA, meet the private school requirements contained in this section.

(Authority: 20 U.S.C. 1412(a)(10); 34CFR 300.129)

NC 1501-6 Children With Disabilities Enrolled by Their Parents in Private Schools

NC 1501-6.1 Definition of parentally-placed private school children with disabilities

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in NC 1500-2.9 or secondary school in NC 1500-2.32. Registered home schools are recognized as private schools in North Carolina. This section does not cover children enrolled by a public agency in private schools or facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.130)

NC 1501-6.2 Child find for parentally-placed private school children with disabilities

(a) General. The LEA where the private school is located must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in the private, including religious, elementary and secondary schools, in accordance with paragraphs (b) through (e) of this section. This does not prohibit a parent from requesting an evaluation from the LEA in which the child resides.
(b) Child find design. The child find process must be designed to ensure--
  (1) The equitable participation of parentally-placed private school children; and
  (2) An accurate count of those children.
(c) Activities. In carrying out the requirements of this section, the LEA must undertake activities similar to the activities undertaken for the agency's public school children.
(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation.
(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the LEA.
(f) Out-of-State children. Each LEA in which private, including religious, elementary and secondary schools are located, must in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools that they attend are located.

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii); 34 CFR 300.131)

NC 1501-6.3 Provision of services for parentally-placed private school children with disabilities--basic requirement

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program by providing them with special education and related services, including direct services determined in accordance with services plans.
(b) Services plan for parentally-placed private school children with disabilities. A services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services.
(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children:

(1) The number of children evaluated;
(2) The number of children determined to be children with disabilities; and
(3) The number of children served.

(Authority: 20 U.S.C. 1412(a)(10)(A)(i); 34 CFR 300.132)

NC 1501-6.4 Expenditures

(a) Formula. Each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) and/or 619(g) of the IDEA as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
(2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.
(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in NC 1500-2.9.
(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA.
(c) Annual count of parentally-placed private school children with disabilities.
(1) Each LEA must--
(i) Consult with representatives of parentally-placed private school children with disabilities in deciding how to conduct the annual count of the number of parentally-placed private school children with disabilities; and
(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive.
(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under these Policies.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.133)

NC 1501-6.5 Consultation

To ensure timely and meaningful consultation, an LEA must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--
  (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
  (2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--
  (1) The types of services, including direct services and alternate service delivery mechanisms; and
  (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  (3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

(Authority: 20 U.S.C. 1412(a)(10)(A)(iii); 34 CFR 300.134)

NC 1501-6.6 Written affirmation.

(a) When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA as a part of their 611 (g) grant application.

(Authority: 20 U.S.C. 1412(a)(10)(A)(iv); 34 CFR 300.135)

NC 1501-6.7 Compliance

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA--
  (1) Did not engage in consultation that was meaningful and timely; or
  (2) Did not give due consideration to the views of the private school official.

(b) Procedure.

(1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
(2) The LEA must forward the appropriate documentation to the SEA.
(3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of the US Department of Education by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(ii) The SEA must forward the appropriate documentation to the Secretary.

(Authority: 20 U.S.C. 1412(a)(10)(A)(v); 34 CFR 300.136)

NC 1501-6.8 Equitable services determined

(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
(b) Decisions.
(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under NC 1501-6.9 through NC 1501-6.15 must be made in accordance with paragraph (c) of this section and the consultation process.
(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
(c) Services plan for each private school child served. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must--
(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.137)

NC 1501-6.9 Equitable services provided

(a) General.
(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teachers requirements of NC 1500-2.13.
(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
(b) Services provided in accordance with a services plan.
(1) Each parentally-placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined and will make available to parentally-placed private school children with disabilities.
(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of an IEP, with respect to the services provided; and
(ii) Be developed, reviewed, and revised consistent with NC 1503-4.2 through NC 1503-5.1.

(c) Provision of equitable services.
(1) The provision of services for parentally-placed private school children with disabilities must be provided:
(i) By employees of an LEA; or
(ii) Through contract by the LEA with an individual, association, agency, organization, or other entity.
(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Authority: 20 U.S.C. 1412(a)(10)(A)(vi); 34 CFR 300.138)

NC 1501-6.10 Location of services and transportation

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
(b) Transportation.
(1) General.
(i) If necessary for the child to benefit from or participate in the services provided under this section, a parentally-placed private school child with a disability must be provided transportation--
(A) From the child's school or the child's home to a site other than the private school; and
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.
(ii) LEAs are not required to provide transportation from the child's home to the private school.
(2) Cost of transportation. The cost of the transportation described above may be included in calculating whether the LEA has met the required expenditures.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.139)

NC 1501-6.11 Due process petitions and State complaints

(a) Due process not applicable, except for child find.
(1) Except as provided in paragraph (a)(2) of this section, due process procedures do not apply to disputes that an LEA has failed to meet the requirements for parentally-placed private school children with disabilities, including the provision of services indicated on the child's services plan.
(2) Due process procedures do apply to disputes that an LEA has failed to meet the requirements of child find including the requirements of NC 1503-1 through NC 1503-3.
(b) State complaints. Complaints that an LEA has failed to meet the requirements of the parentally-placed private school children with disabilities provisions above must be filed under the procedures of the state complaint process.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.140)

NC 1501-6.12 Requirement that funds not benefit a private school

(a) An LEA may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.
(b) The LEA must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for--
  (1) The needs of a private school; or
  (2) The general needs of the students enrolled in the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.141)

NC 1501-6.13 Use of personnel

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities--
  (1) To the extent necessary to provide services for parentally-placed private school children with disabilities; and
  (2) If those services are not normally provided by the private school.
(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services to parentally-placed private school children with disabilities if--
  (1) The employee performs the services outside of his or her regular hours of duty; and
  (2) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.142)

NC 1501-6.14 Separate classes prohibited

An LEA may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if—
(a) The classes are at the same site; and
(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A); 34 CFR 300.143)

NC 1501-6.15 Property, equipment, and supplies

(a) A public agency must control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities, and hold title to and administer materials, equipment, and property purchased with those funds.
(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
(c) The public agency must ensure that the equipment and supplies placed in a private school--
  (1) Are used only for Part B purposes; and
  (2) Can be removed from the private school without remodeling the private school facility.
(d) The public agency must remove equipment and supplies from a private school if--
  (1) The equipment and supplies are no longer needed for Part B purposes; or
  (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
(e) No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A)(vii); 34 CFR 300.144)

NC 1501-7 Children With Disabilities in Private Schools Placed or Referred by Public Agencies

NC 1501-7.1 Applicability

This section applies only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B); 34 CFR 300.145)

NC 1501-7.2 Responsibility of State Education Agency

The SEA shall ensure the LEA's compliance with the following: a child with a disability who is placed in or referred to a private school or facility by the LEA--

(a) Is provided special education and related services--
  (1) In conformance with an IEP that meets the requirements of NC 1503-4 through NC 1503-5.2; and
  (2) At no cost to the parents;
(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEA including the requirements of these Policies; and
(c) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B); 34 CFR 300.146)

NC 1501-7.3 Implementation by State Education Agency

In implementing NC 1501-7.2 the SEA will--

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and
(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B); 34 CFR 300.147)

NC 1501-8 Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

NC 1501-8.1 Placement of children by parents if FAPE is at issue

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with the provisions for parentally-placed private school children with disabilities.

(b) Disagreements about FAPE. Disagreements between the parents and an LEA regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in NC 1504-1.5 through NC 1504-1.21.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of an LEA, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (b) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the LEA to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the LEA informed the parents, through the notice requirements described in NC 1504-1.4(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parent from providing the notice;

(ii) The parents had not received notice of procedural safeguards, including the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parent is not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(Authority: 20 U.S.C. 1412(a)(10)(C); 34 CFR 300.148)

NC 1501-9 SEA Responsibility for General Supervision and Implementation of Procedural Safeguards

NC 1501-9.1 SEA responsibility for general supervision

(a) The SEA is responsible for ensuring-

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools or secondary schools for Indian children operated or funded by the Secretary of the Interior)-
  (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
  (ii) Meets the educational standards of the SEA (including the requirements of this part).
(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq*.) are met.

(b) The State must ensure that it complies with the monitoring and enforcement requirements in NC 1505-1.1 through NC 1505-1.3 and NC 1505-1.7 through NC 1505-1.9.

(c) Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Authority: 20 U.S.C. 1412(a)(11), 1416; 34 CFR 300.149)

NC 1501-9.2 SEA implementation of procedural safeguards

The SEA (and any agency assigned responsibility pursuant NC 1501-9.1) must inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a); 34 CFR 300.150)

NC 1501-10 State Complaint Procedures

NC 1501-10.1 Adoption of State complaint procedures

(a) General. The SEA has written procedures for--
  (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of NC 1501-10.3 by providing for the filing of a complaint with the SEA; and
  (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under NC 1501-10.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, the SEA, pursuant to its general supervisory authority under Part B of the IDEA, must address--
  (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
  (2) Appropriate future provision of services for all children with disabilities.

(Authority: 20 U.S.C. 1221e-3; 34 CFR 300.151)

NC 1501-10.2 Minimum State complaint procedures

(a) Time limit: minimum procedures. The SEA has a time limit of 60 days after a complaint is filed under NC 1501-10.3 to -
  (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
  (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
  (3) Provide the LEA with the opportunity to respond to the complaint, including, at a minimum--
    (i) At the discretion of the LEA, a proposal to resolve the complaint; and
    (ii) An opportunity for a parent who has filed a complaint and the LEA to voluntarily engage in mediation consistent with NC 1504-1.7;
  (4) Review all relevant information and make an independent determination as to whether the LEA is violating a requirement of Part B of the IDEA or of the NC Regulations; and
  (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
    (i) Findings of fact and conclusions; and
    (ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA procedures also –
  (1) Permit an extension of the time limit under paragraph (a) of this section only if--
    (i) Exceptional circumstances exist with respect to a particular complaint; or
    (ii) The parent (or individual or organization) and the LEA involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative dispute resolution; and
  (2) Include mechanisms for ensuring effective implementation of the SEA's final decision, if needed, including:
    (i) Technical assistance activities;
    (ii) Negotiations; and
    (iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under NC 1504-1.8 and NC 1504-2.1 through NC 1504-2.3.
  (1) If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of a due process hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
  (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
    (i) The due process hearing decision is binding on that issue; and
    (ii) The SEA must inform the complainant to that effect.
  (3) A complaint alleging an LEA's failure to implement a due process hearing decision must be resolved by the SEA.

(Authority: 20 U.S.C. 1221e-3; 34 CFR 300.152)

NC 1501-10.3 Filing a complaint

(a) An organization or individual may file a signed written complaint under the procedures described in NC 1501-10.1 through NC 1501-10.2. A signed written complaint may be submitted in person, by

mail, by fax or by way of a PDF file attached to an email. Faxed complaints must be followed up with a hard copy with the original signature delivered in person or by mail.

(b) The complaint must include -
  (1) A statement that an LEA has violated a requirement of Part B of the IDEA or of this part;
  (2) The facts on which the statement is based;
  (3) The signature and contact information for the complainant; and
  (4) If alleging violations with respect to a specific child--
    (i) The name and address of the residence of the child;
    (ii) The name of the school the child is attending;
    (iii) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
    (iv) A description of the nature of the problem of the child, including the facts relating to the problem; and
    (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with NC 1501-10.1.
  (1) The SEA may accept and resolve complaints regarding alleged continuous violations outside the one year time limit when extraordinary circumstances exist such as the parent not receiving a prior written notice or procedural safeguards and the child is denied a FAPE.

(d) The party filing the complaint must forward a copy of the complaint to the Superintendent of the LEA serving the child at the same time the party files the complaint with the SEA.

(Authority: 20 U.S.C. 1221e-3; 34 CFR 300.153)

NC 1501-11 Methods of Ensuring Services

(a) Establishing responsibility for services. The Governor and designees must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:
  (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).
  (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
  (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
  (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) Obligation of noneducational public agencies.
  (1) (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered

special education or related services (such as, but not limited to, services described in NC 1500-2.2 relating to assistive technology devices, NC 1500-2.3 relating to assistive technology services, NC 1500-2.26 relating to related services, NC 1500-2.33 relating to supplementary aids and services, and NC 1500-2.34 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State Agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(c) Special rule. The requirements of paragraph (a) of this section are met through –

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by Governor or designee of that officer and approved by the Secretary.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under these Policies, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child, the public agency -

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) (A) Must obtain, at least annually and/or in conjunction with major modifications to the IEP, parental consent, consistent with NC 1500-2.5, each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under these Policies, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with NC 1500-2.5.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, the agency must -

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under these Policies, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for reporting purposes.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under these Policies, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in NC 1501-12.6 and NC 1502-4.

(h) Construction. Nothing in these Policies should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

(Authority: 20 U.S.C. 1412(a)(12) and (e); 34 CFR 300.154; 115C-108.2)

NC 1501-12 Additional Eligibility Requirements

NC 1501-12.1 Hearings relating to LEA eligibility

The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the IDEA without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Authority: 20 U.S.C. 1412(a)(13); 34 CFR 300.155; 115C-107.4)

NC 1501-12.2 Personnel qualifications

(a) General. The SEA has established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained,

including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section include qualifications for related services personnel and paraprofessionals that -
  (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
  (2) Ensure that related services personnel who deliver services in their discipline or profession -
    (i) Meet the requirements of paragraph (b)(1) of this section; and
    (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under these Policies to children with disabilities.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher.

(d) Qualifications for special education directors. An LEA must ensure that each person employed as a public school special education director meets the following requirements:
  (1) Holds master's level licensure in special education or a related area or master's level licensure in administration and/or supervision;
    (i) An individual holding master's level licensure in special education or a related area must complete 9 semester hours of graduate level coursework in administration and/or supervision; and
    (ii) An individual holding master's level licensure in administration and/or supervision must complete 9 semester hours of graduate level coursework in special education;
  (2) Has obtained a passing score on the appropriate Praxis examination; and
  (3) Has been recommended for licensure by an LEA.

(e) Provisional licenses may be granted to individuals working toward licensure as a special education director.

(f) LEAs must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

(g) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under these Policies.

(Authority: 20 U.S.C. 1412(a)(14); 34 CFR 300.156; 115C-110.1)

NC 1501-12.3 Performance goals and indicators

The State --

(a) Has in effect established goals for the performance of children with disabilities in the State that--
  (1) Promote the purposes of this part;
  (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities;
  (3) Address graduation rates and dropout rates; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Has in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities; and

(c) Annually reports to the US Secretary of Education, hereafter referred to as Secretary, the Joint Legislative Education Oversight Committee on the implementation of Article 9, and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 111(h) of the Elementary and Secondary Education Act (ESEA).

(Authority: 20 U.S.C. 1412(a)(15); 34 CFR 300.157; 115C-107.5)

NC 1501-12.4 Participation in assessments

(a) General. The State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) The State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must--

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) The State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that--

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR §200.1(e), measure the achievement of children with disabilities meeting the State's criteria under §200.1(e)(2) against those standards; and

(iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR §200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

(d) Explanation to IEP Teams. The State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) Inform parents. The State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(f) Reports. The SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if--

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. The SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16); 34 CFR 300.160)

NC 1501-12.5 Supplementation of State, local, and other Federal funds

(a) Expenditures. Funds paid to the State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling.

(1) Funds paid to the State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to the State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).

(c) State-level nonsupplanting.

(1) Except as provided in NC 1502-3, funds paid to the State under Part B of the IDEA must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the IDEA, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under NC 1501-12.7.

(Authority: 20 U.S.C. 1412(a)(17); 34 CFR 300.162; 115C-111.6)

NC 1501-12.6 Maintenance of State financial support

(a) General. The State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the IDEA for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for the State, for one fiscal year at a time, if the Secretary determines that -

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in NC 1501-12.7 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the IDEA.

(d) Subsequent years. If, for any fiscal year, the State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(18); 34 CFR 300.163)

NC 1501-12.7 Waiver of requirements regarding supplementing and not supplanting with Part B funds

(a) Except as provided under NC 1502-3 through NC 1502-6, funds paid to the State under Part B of the IDEA must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the IDEA and in no case to supplant those Federal, State, and local funds. The State may use funds it retains under NC 1506-1.5(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If the State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under NC 1501-12.5 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If the State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--

(A) The State's procedures under NC 1501-2.9 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State's complaint procedures under NC 1501-10.1 through NC 1501-10.3; and

(D) The State's hearing procedures under NC 1504-1.12 through NC 1504-1.17 and NC 1504-2.1 through 1504-2.7;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions and hearing decisions, issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under NC 1501-13.1.

(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the IDEA and NC 1501-12.7 if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii); 34 CFR 300.164)

NC 1501-12.8 Public participation

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA (including any amendments to those policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(b) Before submitting the State plan under this part, the State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

(Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7); 34 CFR 300.165; 115C-112.1)

NC 1501-12.9 Rule of construction

In complying with NC 1501-12.5 and NC 1501-12.6 the State may not use IDEA funds to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

(Authority: 20 U.S.C. 1412(a)(20); 34 CFR 300.166)

NC 1501-13 State Advisory Panel

NC 1501-13.1 State advisory panel

The State has established and maintains an advisory panel (referred to as The Council on Educational Services for Exceptional Children) for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(Authority: 20 U.S.C. 1412(a)(21)(A); 34 CFR 300.167; 115C-112.1)

NC 1501-13.2 Membership

(a) General. The advisory panel consists of members appointed by the Governor, or any other official authorized under State law to make such appointments, are representative of the State population and are composed of individuals involved in, or concerned with the education of children with disabilities, including--
   (1) Parents of children with disabilities (ages birth through 26);
   (2) Individuals with disabilities;
   (3) Teachers;
   (4) Representatives of institutions of higher education that prepare special education and related services personnel;
   (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);
   (6) Administrators of programs for children with disabilities;
   (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
   (8) Representatives of private schools and public charter schools;
   (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
   (10) A representative from the State child welfare agency responsible for foster care; and
   (11) Representatives from the State juvenile and adult corrections agencies.

(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C); 34 CFR 300.168; 115C-112.1)

NC 1501-13.3 Duties

The advisory panel must--

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the IDEA;
(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA; and
(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(D); 34 CFR 300.169; 115C-112.1)

NC 1501-14 Other Provisions Required for State Eligibility

NC 1501-14.1 Suspension and expulsion rates

(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
  (1) Among LEAs in the State; or
  (2) Compared to the rates for nondisabled children within those agencies.
(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the IDEA.

(Authority: 20 U.S.C. 1412(a)(22); 34 CFR 300.170)

NC 1501-14.2 Annual description of use of Part B funds

(a) In order to receive a grant in any fiscal year the State must annually describe--
  (1) How amounts retained for State administration and State-level activities under NC 1506-1.5 will be used to meet the requirements of this part; and
  (2) How those amounts will be allocated among the activities described in NC 1506-1.5 to meet State priorities based on input from LEAs.
(b) If the State's plans for use of its funds under NC 1506-1.5 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(e)(5); 34 CFR 300.171)

NC 1501-14.3 Access to instructional materials

(a) General. The State--
  (1) Has adopted the National Instructional Materials Accessibility Standard (NIMAS) for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner; and
  (2) Is coordinating with the National Instructional Materials Access Center (NIMAC) for paragraphs (b)(3) and (c)(2) of this section.
(b) Rights and responsibilities of SEA.

(1) Nothing in this section relieves the SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in NC 1501-14.3(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(2) In order to meet the responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, all public agencies must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) Preparation and delivery of files. The SEA has chosen to coordinate with NIMAC and must –

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to--

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) Definitions.

(1) In this section and NC 1502-11 --

(i) Blind persons or other persons with print disabilities means children served under these Policies who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;

(ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;

(iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; and

(iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

(Authority: 20 U.S.C. 1412(a)(23); 34 CFR 300.172)

NC 1501-14.4 Overidentification and disproportionality

The SEA and LEA must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in NC 1500-2.4.

(Authority: 20 U.S.C. 1412(a)(24); 34 CFR 300.173)

NC 1501-14.5 Prohibition on mandatory medication

(a) General. State and LEA personnel are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under NC 1503-1 through NC 1503-3, or receiving services under these Policies.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under NC 1501-2.9 (related to child find).

(Authority: 20 U.S.C. 1412(a)(25); 34 CFR 300.174)

NC 1501-14.6 Exception for prior state plans

(a) Modifications made by a State.
   (1) Subject to paragraph (a)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.
   (2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(b) Modifications required by the Secretary. The Secretary may require the State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if--
   (1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended;
   (2) There is a new interpretation of the IDEA by a Federal court or a State's highest court; or
   (3) There is an official finding of noncompliance with Federal law or regulations.

(Authority: 20 U.S.C. 1412(c)(2) and (3); 34 CFR 300.176)

NC 1501-15 State Administration

(a) Rulemaking. The State must--
   (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;
   (2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and
   (3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the IDEA.

(b) Support and facilitation. State rules, regulations, and policies under Part B of the IDEA must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Authority: 20 U.S.C 1407; 34 CFR 300.199)

NC 1502 LOCAL EDUCATIONAL AGENCY ELIGIBILITY

NC 1502-1 Condition of Assistance

An LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in NC 1502-2 through NC 1502-14.

(Authority: 20 U.S.C. 1413(a); 34 CFR 300.200)

NC 1502-2 Consistency with State Policies

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under NC 1501-1.1 through NC 1501-12.6 and NC 1501-12.8 through NC 1501-14.5.

(Authority: 20 U.S.C. 1413(a)(1); 34 CFR 300.201)

NC 1502-3 Use of Amounts

(a) General. Amounts provided to the LEA under Part B of the IDEA--
- (1) Must be expended in accordance with the applicable provisions of this part;
- (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
- (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement.
- (1) General.
  - (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the IDEA to pay for all of the costs directly attributable to the education of a child with a disability.
  - (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
- (2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the IDEA are used.
  - (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in NC 1500-2.10. That amount may not include capital outlay or debt service.
- (3) If two or more LEAs jointly establish eligibility in accordance with NC 1502-18 the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A); 34 CFR 300.202)

NC 1502-4 Maintenance of Effort

(a) General. Except as provided in NC 1502-5 and NC 1502-6, funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard.

(1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(2)(A); 34 CFR 300.203)

NC 1502-5 Exception to Maintenance of Effort

Notwithstanding the restriction in NC 1502-4(a), an LEA may reduce the level of expenditures by the LEA under Part B below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child--

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under NC 1506-1.5(c).

(Authority: 20 U.S.C. 1413(a)(2)(B); 34 CFR 300.204)

NC 1502-6 Adjustment to Local Fiscal Efforts in Certain Fiscal Years

(a) Amounts in excess. Notwithstanding NC 1502-3(a)(2) and (b) and NC 1502-4(a), and except as provided in paragraph (d) of this section and NC 1502-24(e)(2), for any fiscal year for which the allocation received by an LEA under NC 1506-1.6 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by NC 1502-4(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if the SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by an LEA for early intervening services NC 1502-20 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a).

(Authority: 20 U.S.C. 1413(a)(2)(C); 34 CFR 300.205)

NC 1502-7 Schoolwide Programs under Title I of the ESEA

(a) General. Notwithstanding the provisions of NC 1502-3 and NC 1502-4, or any other provisions of Part B of the IDEA, an LEA may use funds received under Part B of the IDEA for any fiscal year to carry out a school wide program under section 1114 of the ESEA, except that the amount used in any school wide program may not exceed--
   (1) (i) The amount received by the LEA under Part B of the IDEA for that fiscal year; divided by
   (ii) The number of children with disabilities in the LEA; and multiplied by
   (2) The number of children with disabilities participating in the school wide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:
   (1) The funds must be considered as Federal Part B funds for the purposes of the calculations required by NC 1502-3(a)(2) and (a)(3).
   (2) The funds may be used without regard to the requirements of NC 1502-3(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the IDEA must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in school wide program schools--
   (1) Receive services in accordance with a properly developed IEP; and
   (2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

(Authority: 20 U.S.C. 1413(a)(2)(D); 34 CFR 300.206)

NC 1502-8 Personnel Development

The LEA must ensure that all personnel necessary to carry out Part B of the IDEA are appropriately and adequately prepared, subject to the requirements of NC 1501-12.2 (related to personnel qualifications) and section 2122 of the ESEA.

(Authority: 20 U.S.C. 1413(a)(3); 34 CFR 300.207)

NC 1502-9 Permissive Use of Funds

(a) Uses. Notwithstanding NC 1502-3, NC 1502-4(a), and NC 1501-12.5(b), funds provided to an LEA under Part B of the IDEA may be used for the following activities:
   (1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
   (2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with NC 1502-20.
   (3) High cost education and related services. To establish and implement cost or risk sharing funds, for the LEA itself, or for LEAs working together, to pay for high cost special education and related services.

(b) Administrative case management. An LEA may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

(Authority: 20 U.S.C. 1413(a)(4); 34 CFR 300.208)

NC 1502-10 Treatment of Charter Schools and Their Students

(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under these Policies.

(b) Public charter schools that are LEAs. Public charter schools are LEAs, consistent with NC 1500-2.20, and receive funding under NC 1506-1.6; therefore, charter schools are responsible for ensuring that the requirements of these Policies are met.

(Authority: 20 U.S.C. 1413(a)(5); 34 CFR 300.209)

NC 1502-11 Purchase of Instructional Materials

(a) General. An LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the SEA under NC 1501-14.3.

(b) Rights of LEA.
   (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.
   (2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
   (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in NC 1501-14.3(e)(1)(i) or who

need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(Authority: 20 U.S.C. 1413(a)(6); 34 CFR 300.210)

NC 1502-12 Information for SEA

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the IDEA, including, with respect to NC 1501-12.3, information relating to the performance of children with disabilities participating in programs carried out under Part B of the IDEA.

(Authority: 20 U.S.C. 1413(a)(7); 34 CFR 300.211)

NC 1502-13 Public Information

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

(Authority: 20 U.S.C. 1413(a)(8); 34 CFR 300.212)

NC 1502-14 Records Regarding Migratory Children with Disabilities

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Authority: 20 U.S.C. 1413(a)(9); 34 CFR 300.213)

NC 1502-15 Exceptions for Prior Local Plans

(a) General. If an LEA has on file with the SEA policies and procedures that demonstrate that the LEA meets any requirement of NC 1502-1, including any policies and procedures filed under Part B of the IDEA as in effect before December 3, 2004, the SEA must consider the LEA to have met that requirement for purposes of receiving assistance under Part B of the IDEA.

(b) Modification made by an LEA. Subject to paragraph (c) of this section, policies and procedures submitted by an LEA in accordance with this subpart remain in effect until the LEA submits to the SEA the modifications that the LEA determines are necessary.

(c) Modifications required by the SEA. The SEA may require an LEA to modify its policies and procedures, but only to the extent necessary to ensure the LEA's compliance with Part B of the IDEA or State law, if--
   (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the IDEA (or the regulations developed to carry out the Act) are amended;
   (2) There is a new interpretation of an applicable provision of the IDEA by Federal or State courts; or
   (3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b); 34 CFR 300.220)

NC 1502-16 Notification of LEA in Case of Ineligibility

If the SEA determines that an LEA is not eligible under Part B of the IDEA, then the SEA must--
(a) Notify the LEA of that determination; and
(b) Provide the LEA with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c); 34 CFR 300.221)

NC 1502-17 LEA Compliance

(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA that has been determined to be eligible under this subpart is failing to comply with any requirement described in NC 1502-2 through NC 1502-14, the SEA must reduce or must not provide any further payments to the LEA until the SEA is satisfied that the LEA is complying with that requirement.
(b) Notice requirement. Any LEA in receipt of a notice described in paragraph (a) must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
(c) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under NC 1504-1.12 through NC 1504-2.4 that is adverse to the LEA involved in the decision.

(Authority: 20 U.S.C. 1413(d); 34 CFR 300.222)

NC 1502-18 Joint Establishment of Eligibility

(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
(b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section.
(c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under NC 1506-1.6 if the agencies were eligible for those payments.

(Authority: 20 U.S.C. 1413(e)(1) and (2); 34 CFR 300.223)

NC 1502-19 Requirements for Establishing Eligibility

Requirements for LEAs in general. LEAs that establish joint eligibility under this section must--
(a) Adopt policies and procedures that are consistent with the State's policies and procedures under NC 1501-1.1 through NC 1501-12.6 and NC 1501-12.8 through NC 1501-14.5; and
(b) Be jointly responsible for implementing programs that receive assistance under Part B of the IDEA.

(Authority: 20 U.S.C. 1413(e)(3) and (4); 34 CFR 300.224)

NC 1502-20 Early Intervening Services

(a) General. An LEA may not use more than 15 percent of the amount received under Part B of the IDEA for any fiscal year, less any amount reduced by the agency pursuant to NC 1502-6, if any, in

combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--
   (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
   (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on--
   (1) The number of children served under this section who received early intervening services; and
   (2) The number of children served under this section who subsequently receive special education and related services under Part B of the IDEA during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(Authority: 20 U.S.C. 1413(f); 34 CFR 300.226)

NC 1502-21 State Agency Eligibility

Any LEA that desires to receive a subgrant for any fiscal year under NC 1506-1.6 must demonstrate to the satisfaction of the SEA that--

(a) All children with disabilities who are participating in programs and projects funded under Part B of the IDEA receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The LEA meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(h); 34 CFR 300.228)

NC 1502-22 SEA Flexibility

(a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by the State under NC 1506-1.4 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding NC 1501-12.5 through NC 1501-12.6 (related to State-level nonsupplanting and maintenance of effort), and NC 1501-14.6 (related to direct services by the SEA) may reduce the level of expenditures from State sources for

the education of children with disabilities by not more than 50 percent of the amount of such excess.

(b) Prohibition. Notwithstanding paragraph (a) of this section, if the Secretary determines that the SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under NC 1505-1.4, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.

(c) Education activities. If the SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) Report. For each fiscal year for which the SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary--

(1) The amount of expenditures reduced pursuant to that paragraph; and

(2) The activities that were funded pursuant to paragraph (c) of this section.

(e) Limitation.

(1) Notwithstanding paragraph (a) of this section, the SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the IDEA and State funds received from the SEA.

(2) If the SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under NC 1502-6 by more than the reduction in the State funds they receive.

(Authority: 20 U.S.C. 1413(j); 34 CFR 300.230)

NC 1503 EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

NC 1503-1 Parental Consent

(a) Parental consent for initial evaluation.

(1) (i) The LEA proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under NC 1500-2.4 must, after providing notice consistent with NC 1504-1.4 and NC 1504-1.5, obtain informed consent, consistent with NC 1500-2.5, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The LEA must 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.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if --

(i) Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child; or

(ii) The rights of the parent to make educational decisions have been removed by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, (including the mediation procedures NC 1504-1.7 or due process procedures under NC 1504-1.8 through NC 1504-1.17), if appropriate.

(ii) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) An LEA that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and relates services, the public agency--

(i) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC 1504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) 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 the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP for the child under NC 1503-4.1 and NC 1503-5.1.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with NC 1504-1.4 before ceasing the provision of special education and related services;
(ii) May not use the procedures in NC 1504 (Procedural Safeguards) of this document (including the mediation procedures under NC 1504-1.7 or the due process procedures under NC 1504-1.8 through NC 1504-1.17) in order to obtain agreement or a ruling that the services may be provided to the child;
(iii) 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; and
(iv) Is not required to convene an IEP Team meeting or develop an IEP under NC 1503-4.1 and NC 1503-5.1 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations.
(1) Subject to paragraph (c)(2) of this section, each LEA –
(i) Must obtain informed parental consent, in accordance with NC 1503-2.1(a)(1), prior to conducting any reevaluation of a child with a disability.
(ii) If the parent refuses to consent to reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
(iii) The LEA does not violate its obligation under NC 1501-2.9 and NC 1503-2.1 through NC 1503-3.5 if it declines to pursue the evaluation or reevaluation.
(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the LEA can demonstrate that--
(i) It made reasonable measures to obtain such consent; and
(ii) The child's parent has failed to respond.

(d) Other consent requirements.
(1) Parental consent is not required before-
(i) Reviewing existing data as part of an evaluation or a reevaluation; or
(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
(2) An LEA may not use a parent's refusal to consent to one service or activity under paragraph (a) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.
(3) (i) If a parent of a child who is home schooled or placed in a private school by the parent at their own expense does not provide consent for initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and
(ii) The public agency is not required to consider the child as eligible for services under NC 1501-6.3 through NC 1501-6.15.
(4) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in NC 1503-4.3(d).

(Authority: 20 U.S.C. 1414(a)(1)(D)and 1414(c); 34 CFR 300.300)

NC 1503-2 Referrals, Evaluations and Reevaluations

NC 1503-2.1 Referral

When a public agency, as defined at NC 1500-2.27 or parent suspects that a child may be a child with a disability, he/she shall provide in writing the reason for referral, addressing the specific presenting concerns and the child's current strengths and needs. This referral shall be given to the principal of the school, the child's teacher or other school professional, or the Superintendent or other appointed official of the LEA. For preschool children with disabilities, the referral may also be given to the person designated as the person in charge of services for preschool children with disabilities.

NC 1503-2.2 Initial evaluations

(a) General. Each LEA must conduct a full and individual initial evaluation in accordance with NC 1503-2.4 through NC 1503-2.7 before the initial provision of special education and related services to a child with a disability under these Policies.

(b) Request for initial evaluation. Consistent with the consent requirements in NC 1503-1, either a parent of a child, or an LEA may initiate a request for an initial evaluation to determine if the child is a child with a disability. Upon an oral request for an initial evaluation from a parent, the LEA shall provide assistance, as needed, in completing a written referral.

(c) Procedures for initial evaluation. The initial evaluation -
   (1) Must be conducted; eligibility determined; and for an eligible child, the IEP developed; and placement completed within 90 days of receipt of a written referral; and
   (2) Must determine--
      (i) If the child is a child with a disability under NC 1500-2.4; and
      (ii) The educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) does not apply to an LEA if--
   (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation;
   (2) The parent of a child repeatedly fails or refuses to respond to a request for consent for the evaluation; or
   (3) A child enrolls in a school of another LEA after the 90 day timeline has begun, and prior to determination by the child's previous LEA as to whether the child is a child with a disability under NC 1500-2.4.

(e) The exception in paragraph (d)(3) of this section applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a); 34 CFR 300.301)

NC 1503-2.3 Screening for instructional purposes is not evaluation

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.

(Authority: 20 U.S.C. 1414(a)(1)(E); 34 CFR 300.302)

NC 1503-2.4 Reevaluations

(a) General. A public agency must ensure that the timely reevaluation for each child with a disability is conducted in accordance with NC 1503-2.5 through NC 1503-3.5
   (1) If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant additional evaluation data; or

(2) If the child's parent or teacher requests additional evaluation data.

(b) Limitation. The reevaluation conducted under paragraph (a) of this section--
(1) May occur not more than once a year, unless the parent and the LEA agree otherwise; and
(2) Must occur at least once every 3 years.

(c) Reevaluation of Children Identified As Developmentally Delayed. The reevaluation of children identified as developmentally delayed shall occur at least once every 3 years following placement or prior to turning eight years of age, or prior to entering third grade (whichever comes first).

(Authority: 20 U.S.C. 1414(a)(2); 34 CFR 300.303)

NC 1503-2.5 Evaluation procedures

(a) Notice. The LEA must provide notice to the parents of a child with a disability, in accordance with NC 1504-1.4, that describes any area in which the LEA proposes to conduct evaluation.

(b) Conducting the evaluation. In conducting the evaluation, the LEA must--
(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--
(i) Whether the child is a child with a disability under NC 1500-2.4; and
(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each LEA must ensure that--
(1) Assessments and other evaluation materials used to assess a child under these Policies --
(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
(ii) Are provided and administered 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 or administer;
(iii) Are used for the purposes for which the assessments or measures are valid and reliable;
(iv) Are administered by trained and knowledgeable personnel; and
(v) Are administered in accordance with any instructions provided by the producer of the assessments.
(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
(5) Assessments of children with disabilities who transfer from one LEA to another LEA in the same school year are coordinated with those children's prior and subsequent schools, as

necessary and as expeditiously as possible, consistent with NC 1503-2.1(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability NC 1503-2.4 through NC 1503-2.6, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(d) Required screenings and evaluation for eligibility determination.

A full and individualized evaluation of a child's needs must be conducted before any action is taken with respect to determining eligibility for special education. Required screenings and evaluation to determine eligibility in each area of disability are as follows:

(1) Autism Spectrum Disorder.

(i) Required screenings and evaluations:

(A) Hearing screening;

(B) Vision screening;

(C) Observation across settings, to assess academic and functional skills;

(D) Summary of conference(s) with parents or documentation of attempts to conference with parents;

(E) Social/developmental history;

(F) Educational evaluation;

(G) Adaptive behavior evaluation;

(H) Psychological evaluation;

(I) Speech-language evaluation which includes, but is not limited to, measures of language semantics and pragmatics;

(J) An assessment using an appropriate behavior rating tool or an alternative assessment instrument that identifies characteristics associated with autism spectrum disorder.

(ii) To be determined eligible in the disability category of autism, a child must demonstrate at least three of the four characteristics listed below:

(A) Impairment in communication;

(B) Impairment in social interaction;

(C) Unusual response to sensory experiences;

(D) Restricted, repetitive, or stereotypic patterns of behavior, interests, and/or activities.

(iii) The disability must:

(A) Have an adverse effect on educational performance, and

(B) Require specially designed instruction.

(2) Deaf-blindness.

(i) Required screenings and evaluations:

(A) Motor screening;

(B) Observation across settings, to assess academic and functional skills;

(C) Summary of conference(s) with parents or documentation of attempts to conference with parents;

(D) Social/developmental history;

(E) Educational evaluation;

(F) Adaptive behavior evaluation;

(G) Psychological evaluation;

(H) Communication evaluation, including receptive, expressive, and augmentative communication skills;

(I) Audiological evaluation, followed by an otological evaluation when appropriate;
(J) Medical evaluation, including health history, precautions, and medications; and
(K) Ophthalmological or optometric evaluation;

(ii) To be determined eligible in the disability category of deaf-blindness, a child must demonstrate:
(A) A visual impairment, in combination with a hearing impairment,
(B) Resulting in severe communication, developmental, and educational needs, and
(C) That cannot be accommodated in a program for a child with solely a visual impairment or hearing impairment.

(iii) The disability must:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(3) Deafness.

(i) Required screenings and evaluations:
(A) Vision screening;
(B) Motor screening;
(C) Observation across settings, to assess academic and functional skills;
(D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(E) Social/developmental history;
(F) Educational evaluation;
(G) Communication evaluation, including receptive, expressive, and augmentative communication skills;
(H) Audiological evaluation, including air conduction testing, bone conduction testing, speech receptive testing with and without amplification, and impedance testing to determine the type and extent of hearing loss;
(I) Otological evaluation to provide diagnoses of middle and inner ear disorders.

(ii) To be determined eligible in the disability category of deafness, a child must have a deficiency in hearing as demonstrated by the elevated threshold of auditory sensitivity to pure tones or speech.

(iii) The disability must:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(4) Developmental Delay.

(i) Required screenings and evaluations:
(A) Hearing screening;
(B) Vision screening;
(C) Motor screening;
(D) Health screening;
(E) Speech-language screening;
(F) Observation across settings, to assess academic and functional skills;
(G) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(H) Social/developmental history;
(I) Educational evaluation;
(J) Adaptive behavior evaluation; and
(K) Psychological evaluation, including cognitive and social-emotional measures;

(ii) To be determined eligible in the disability category of developmental delayed, a child must be:

(A) Between the ages of three through seven, whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.

(B) Delayed/Atypical Development. A child may be defined as having delayed/atypical patterns of development in one or more of the following five areas: physical development, cognitive development, communication development, social/emotional development or adaptive development.

a. The criteria for determining delayed development for ages three through seven are:

1. A 30 percent delay using assessment procedures that yield scores in months, or test performance of 2 standard deviations below the mean on standardized tests in one area of development; or
2. A 25 percent delay using assessment procedures that yield scores in months or test performance of 1.5 standard deviations below the mean on standardized tests in two areas of development.

b. Identification of these children will be based on informed educational/clinical opinion and appropriate assessment measures.

(C) Delayed/Atypical Behavior. A child with delayed or atypical behavior is characterized by behaviors that are so significantly inadequate or inappropriate that they interfere with the child's ability to learn and/or cope with normal environmental or situational demands. There must be evidence that the patterns of behavior occur in more than one setting over an extended period of time.

a. The criteria for determining delayed/atypical behavior for ages three through five must be documented in one or more of the following areas:

1. Delayed or abnormalities in achieving milestones and/or difficulties with issues, such as:
   i. Attachment and/or interaction with other adults, peers, materials, and objects;
   ii. Ability to communicate emotional needs;
   iii. Ability to tolerate frustration and control behavior, or
   iv. Ability to inhibit aggression.
2. Fearfulness, withdrawal, or other distress that does not respond to comforting or interventions;
3. Indiscriminate sociability, for example, excessive familiarity with relative strangers; or
4. Self-injurious or other aggressive behavior.

b. The criteria for determining delayed patterns of behavior and adaptive skills for ages six through seven must be exhibited in two or more of the following ways:

1. The inability to interact appropriately with adults and peers;
2. The inability to cope with normal environmental or situational demands;
3. The use of aggression or self-injurious behavior, or
4. The inability to make educational progress due to social/emotional deficits.

c. Identification of these children will be based on informed educational/ clinical opinion and appropriate assessment measures.

(5) Emotional Disability.

(i) Required screenings and evaluations:

(A) Hearing screening;

(B) Vision screening;

(C) Two scientific research-based interventions to address behavioral/emotional skill deficiency and documentation of the results of the interventions, including progress monitoring documentation;
(D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(E) Communication evaluation;
(F) Review of existing data;
(G) Social/developmental history;
(H) Observation across settings, to assess academic, functional, and behavioral skills;
(I) Educational evaluation;
(J) Psychological evaluation, to include an intellectual evaluation;
(K) Behavioral/emotional evaluation which may include a behavior/emotional skill rating;

(ii) To be determined eligible in the disability category of serious emotional disability:
(A) One of the following characteristics must be exhibited:
a. An inability to make educational progress that cannot be explained by intellectual, sensory, or health factors;
b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
c. Inappropriate types of behavior or feelings under normal circumstances;
d. A general pervasive mood of unhappiness or depression; or
e. A tendency to develop physical symptoms or fears associated with personal or school problems.
(B) Additionally, the condition must be exhibited:
a. Over a long period of time; and
b. To a marked degree.

(iii) The disability must:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(6) Hearing Impairment (Hard of Hearing)
(i) Required screenings and evaluations:
(A) Vision screening;
(B) Motor screening;
(C) Social/developmental history;
(D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(E) Observation across settings, to assess academic and functional skills;
(F) Educational evaluation;
(G) Communication evaluation, including receptive, expressive, and augmentative communication skills;
(H) Otological evaluation for diagnoses of middle or inner ear disorders; and
(I) Audiological evaluation to include air conduction testing, bone conduction testing, speech reception testing with and without amplification, and impedance testing to determine the type and extent of any hearing loss that may be present.

(ii) To be determined eligible in the disability category of hearing impairment, a child must have a documented hearing loss of a type and extent to:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(7) Intellectual Disability.
(i) Required screenings and evaluations:

(A) Hearing screening;
(B) Vision screening;
(C) Health screening;
(D) Motor screening;
(E) Speech/language screening;
(F) When there is no prior diagnosis of intellectual disability, two scientific research-based interventions to address academic and/or functional skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;
(G) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(H) Review of existing data;
(I) Social/developmental history;
(J) Observation across settings, to assess academic, functional, and behavioral skills;
(K) Educational evaluation;
(L) Adaptive behavior evaluation; and
(M) Psychological evaluation, to include an intellectual evaluation.

(ii) To be determined eligible in the disability category of intellectual disability, a child must demonstrate both:
(A) Intellectual functioning well below the mean on an individually administered standardized intelligence test, and the standard error of measurement of that test shall be taken into account in the interpretation of the results. Measures below the mean are as follows:
a. Mild: Two standard deviations below the mean plus or minus one standard error of measure;
b. Moderate: Three standard deviations below the mean plus or minus one standard error of measure;
c. Severe: Four or more standard deviations below the mean plus or minus one standard error of measure.
(B) Adaptive behavior deficits at or below:
a. Two standard deviations below the mean in one domain, or
b. One and one-half standard deviations below the mean in two or more domains.

(iii) The disability must:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(8) Multiple Disabilities.
(i) Required screenings and evaluations:
(A) Hearing screening;
(B) Vision screening;
(C) Social/developmental history;
(D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(E) Observation across settings, to assess academic and functional skills;
(F) Educational evaluation;
(G) Adaptive behavior evaluation;
(H) Psychological evaluation;
(I) Speech/language evaluation;
(J) Medical evaluation; and
(K) Motor evaluation.

(ii) To be determined eligible in the disability category of multiple disabilities, a child must demonstrate:
- (A) Two or more disabilities occurring together,
- (B) The combination of which is so severe, complex, and interwoven that identification in a single category of disability cannot be determined.

(iii) The disability must:
- (A) Have an adverse effect on educational performance, and
- (B) Require specially designed instruction.

(9) Orthopedic Impairment

(i) Required screenings and evaluations:
- (A) Hearing screening;
- (B) Vision screening;
- (C) Social/developmental history;
- (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
- (E) Observation across settings, to assess academic and functional skills;
- (F) Educational evaluation;
- (G) Medical evaluation;
- (H) Motor evaluation.

(ii) To be determined eligible in the disability category of orthopedic impairment, a child must demonstrate:
- (A) A severe physical impairment;
- (B) Caused by congenital abnormalities, disease, or other causes.

(iii) The disability must:
- (A) Have an adverse effect on educational performance, and
- (B) Require specially designed instruction.

(10) Other Health Impairment

(i) Required screenings and evaluations:
- (A) Hearing screening;
- (B) Vision screening;
- (C) Two scientific research-based interventions to address academic and/or behavioral skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;
- (D) Summary of conference(s) with parents or documentation of attempts to conference with parents;
- (E) Observation across settings, to assess academic and functional skills;
- (F) Social/developmental history;
- (G) Educational evaluation; and
- (H) Medical evaluation.

(ii) To be determined eligible in the disability category of other health impairment, a child must have a chronic or acute health problem resulting in one or more of the following:
- (A) Limited strength;
- (B) Limited vitality;
- (C) Limited alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

(iii) The disability must:
- (A) Have an adverse effect on educational performance, and
- (B) Require specially designed instruction.

(11) Specific Learning Disability.

There are two methods for determining eligibility in the disability category of Specific Learning Disability: the use of a discrepancy, which may result in the use of an alternative to

the discrepancy analysis; and the use of a process based on scientific research-based interventions.

(i) Required screenings and evaluations using the discrepancy method.
- (A) Hearing screening;
- (B) Vision screening (far and near acuity);
- (C) Speech/language screening;
- (D) Two scientific research-based interventions to address academic skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;
- (E) Summary of conference(s) with parents or documentation of attempts to conference with parents;
- (F) Review of existing data;
- (G) Social/developmental history;
- (H) Observation across settings to assess academic and functional skills;
- (I) Educational evaluation; and
- (J) Psychological evaluation, to include an intellectual evaluation.

(ii) Required data gathering when using a process based on scientific research-based interventions (RtI). A problem-solving process must be utilized to make educational decisions about a child's responsiveness to scientific research-based intervention as part of a comprehensive evaluation to determine eligibility in the disability category of Specific Learning Disability. The following must occur during the problem-solving process:

Tier I –
- (A) Hearing screening;
- (B) Vision screening (far and near acuity);
- (C) Implementation of a scientific research-based intervention;
- (D) Progress monitoring data;
- (E) Documented parent and teacher assessment of the effectiveness of the intervention;
- (F) Summary of conference(s) with parents or documentation of attempts to conference with parents; and
- (G) Review of existing data.

Tier II –
- (A) Analysis of Tier I scientific research-based intervention;
- (B) Documented modifications/discontinuation of the intervention or implementation of a new scientific research-based intervention;
- (C) Progress monitoring data;
- (D) Documented parent and teacher assessment of the effectiveness of the intervention; and
- (E) Summary of conference(s) with parents and other school staff.

Tier III –
- (A) Analysis of Tier II scientific research-based intervention;
- (B) Documented modifications/discontinuation of the intervention or implementation of a new scientific research-based intervention;
- (C) Progress monitoring data;
- (D) Documented parent, staff, and problem-solving team assessment of the effectiveness of the intervention;

(E) Summary of conference(s) with parents, school staff, and the problem-solving team;
(F) Speech/language screening;
(G) Social/developmental history; and
(H) Observation by an independent observer for the purpose of intervention and to inform instruction.

Tier IV –
(A) Analysis of Tier III scientific research-based intervention;
(B) Documented modifications/discontinuation of the intervention or implementation of a new scientific research-based intervention;
(C) Summary of conference(s) with parents, school staff, and the problem-solving team; and
(D) Option 1: Modify Tier III intervention (frequency, intensity, duration, or content) and implement the modifications; or
Option 2: Complete referral for consideration for special education. If Option 2 is chosen, receipt of the completed referral for consideration for special education by school personnel begins the 90-day timeline, defined in NC 1503-2.2(c)(1), and if additional evaluation data are necessary, requires that informed parental consent for evaluation be obtained.

(iii) In order to be eligible in the disability category of specific learning disability, the criteria in subsections (A), (B), (C) and (D) below must be met by either:
a. Calculating a discrepancy between achievement (as measured by the educational evaluation) and measured ability (as measured by the intellectual evaluation) of at least 15 points.* Subscale, subtest, factor or other scores used to estimate intellectual functioning may not be used to determine a discrepancy; or
b. Documenting the use of a process based on a child's response to scientific researched-based intervention as outlined in subsection (ii) above. An IEP Team must determine that the child needs resources beyond what can reasonably be provided in general education (per RtI).

(A) The child does not achieve adequately for the child's age, intellectual development or to meet State-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
a. Listening comprehension.
b. Oral expression.
c. Written expression.
d. Basic reading skills.
e. Reading fluency skills.
f. Reading comprehension.
g. Mathematics calculation.
h. Mathematics problem solving.

(B) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified above in paragraph (a) when using a process based on the child's response to scientific, research-based intervention; **or**
(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or

intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with NC 1503-2.5 (d)(11)(i) or (ii).

(C) The disability must not be the primary result of:
1. Sensory deficits;
2. Motor deficits;
3. Intellectual disability;
4. Serious emotional disability;
5. Environmental influences;
6. Cultural factors;
7. Economic influences;
8. Lack of appropriate instruction in reading or math; and/or
9. Limited English proficiency.

(D) The disability must have an adverse effect on educational performance, and require specially designed instruction.

*When the parent and team of qualified professionals, including at least one person qualified to conduct individual diagnostic examinations, determine that a discrepancy of fewer than 15 points is not an accurate reflection of the student's academic functioning, the team must document other sources of evidence to support an eligibility determination. These sources of evidence may include, but are not limited to, the following: other formal or informal assessment measures; classroom performance; pre- and post-data from required research-based interventions; or a pattern of strengths and weaknesses not reflected in the student's performance on standardized cognitive and/or achievement measures.

(12) Speech or Language Impairment.

(i) Required screenings and evaluations:
- (A) Hearing screening;
- (B) Articulation screening;
- (C) Fluency screening;
- (D) Language screening;
- (E) Voice/resonance screening;
- (F) Social/developmental history;
- (G) Observation across settings, to assess academic, functional, and behavior skills;
- (H) Summary of conference(s) with parents or documentation of attempts to conference with parents; and
- (I) Educational evaluation.

(ii) Additionally, one of the following evaluations shall be completed. The required evaluation(s) shall be determined based on screening results and shall be individualized to address the specific area(s) of concern as listed:
- (A) Articulation evaluation;
- (B) Fluency evaluation;
- (C) Language evaluation, including form, content and function;
- (D) Voice/resonance evaluation.

(iii) To be determined eligible for services in the disability category of speech or language impairment, a child must meet the criteria listed in one or more of the following areas:

(A) Articulation. It is required that a child's speech have:

a. Two or more phonemic errors not expected at the child's age or developmental level observed during direct testing and/or in conversational speech, and/or

b. Two or more phonological processes not expected at the child's age or development level observed during direct testing and/or in conversational speech.

(B) Fluency. It is required that a child demonstrate non-fluent speech behavior characterized by repetitions/prolongations/blocks on a regular basis.

(C) Language. It is required that two diagnostic measures occur, one assessing comprehension and one assessing production of language. It is required that:

a. Standard scores on the particular standard evaluation instrument suggest a language disorder; and/or

b. Non-standardized/informal assessment indicates that the child has difficulty understanding and/or expressing ideas and/or concepts.

(D) Voice. It is required that a child must demonstrate consistent deviations in vocal production that are inappropriate for chronological/mental age, gender, and ability.

(iv) The disability must:

(A) Have an adverse effect on educational performance, and

(B) Require specially designed instruction.

(13) Traumatic Brain Injury.

(i) Required screenings and evaluations:

(A) Hearing screening;

(B) Vision screening;

(C) Speech/language screening;

(D) Two scientific research-based interventions to address academic and/or behavioral skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation.

*** Note:** Screenings (A) through (D) may be waived for students who have been medically diagnosed with traumatic brain injury and who have received medical and/or rehabilitative services in a medical or rehabilitation program or setting within the previous twelve months.

(E) Review of medical history and records;

(F) Review of educational history and records;

(G) Summary of conference(s) with parents or documentation of attempts to conference with parents;

(H) Social/developmental history;

(I) Observation across settings to assess academic and functional skills;

(J) Educational evaluation;

(K) Psychological evaluation for traumatic brain injury; and

(L) Motor evaluation.

(ii) To be determined eligible in the disability category of traumatic brain injury, a written verification by a licensed physician or a licensed psychologist, appropriately practicing in the specialty of neuropsychology, that the child has sustained an injury from which brain injury can be inferred must be obtained. No time limits exist for written verification.

(iii) Psychological evaluation for traumatic brain injury must be conducted by school psychologists licensed by the State Department of Public Instruction, or by psychologists who are appropriately practicing in the specialty of neuropsychology and are licensed by the North Carolina State Board of Examiners of Practicing Psychologists. All psychological evaluations for Traumatic Brain Injury must be current within one year. All school psychologists providing assessment of children with Traumatic Brain Injury must meet the guidelines of the Exceptional Children Division for training in the assessment of Traumatic Brain Injury and be listed on the Exceptional Children Division's registry of approved providers (hereafter referred to as the registry.)

(iv) The disability must:
(A) Have an adverse effect on educational performance, and
(B) Require specially designed instruction.

(14) Visual Impairment, including blindness.
(i) Required screenings and evaluations:
(A) Hearing screening;
(B) Summary of conference(s) with parents or documentation of attempts to conference with parents;
(C) Social/developmental history;
(D) Educational evaluation;
(E) Ophthalmological or optometric evaluation;
(F) For preschool children:
a. Observation across settings to include:
1. Observation of physical, behavioral and environmental characteristics;
2. Shutting or covering one eye, tilting head or thrusting head forward, squinting eyelids together;
3. Difficulty with work requiring vision;
4. Avoidance of near work task or irritation when required to do near work;
5. Inability to see distant objects;
6. Difficulty with navigation; and
7. Eye appearance (e.g., crossed eyes, nystagmus).
(G) For school age children:
a. Observation across settings to assess academic, and functional skills;
b. Functional vision assessment; and
c. Braille skills inventory and/or media assessment.
(ii) To be determined eligible in the disability category of visual impairment, including blindness, a child must have:
(A) A visual acuity between 20/70 and 20/200 in the better eye after correction to be considered visually impaired.
(B) A visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees to be considered legally blind.
(iii) The disability must:
(A) Have an adverse effect on educational performance; and
(B) Require specially designed instruction.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B); 34 CFR 300.304)

NC 1503-2.6 Additional requirements for evaluations and reevaluations

(a) Review of existing evaluation data. As part of an initial evaluation and as part of any reevaluation process under these Policies, the IEP Team and other qualified professionals, as appropriate, must--
(1) Review existing evaluation data on the child, including--
(i) Evaluations and information provided by the parents of the child;
(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
(iii) Observations by teachers and related services providers; and
(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) (A) Whether the child is a child with a disability, as defined in NC 1500-2.4 and the educational needs of the child; or
(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
(ii) The present levels of academic achievement and related developmental needs of the child;
(iii) (A) Whether the child needs special education and related services; or
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting. If the review is conducted without a meeting, documentation of the process for gathering input from the group must be maintained.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.
(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of -
(i) That determination and the reasons for the determination; and
(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) Reevaluation before change in eligibility for special education
(1) Except as provided in paragraph (e)(2) of this section, an LEA must reevaluate a child with a disability in accordance with NC 1503-2.4 through NC 1503-3.5 before determining that the child is no longer a child with a disability.
(2) The reevaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(f) Reevaluation of children identified as developmentally delayed. The reevaluation of children identified as developmentally delayed shall occur 3 years following placement or prior to turning eight years of age, or prior to entering third grade (whichever comes first).

(Authority: 20 U.S.C. 1414(c); 34 CFR 300.305)

NC 1503-2.7 Determination of eligibility

(a) General. Upon completion of the administration of assessments and other evaluation measures--
(1) A group of qualified professionals and the parent determines whether the child is a child with a disability as defined in NC 1500-2.4, in accordance with paragraph (b) of this section and the educational needs of the child; and
(2) The LEA provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under these Policies --
  (1) If the determinant factor for that determination is--
    (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
    (ii) Lack of appropriate instruction in math; or
    (iii) Limited English proficiency; and
  (2) If the child does not otherwise meet the eligibility criteria under NC 1500-2.4(a).

(c) Procedures for determining eligibility and educational need.
  (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under NC 1500-2.4, and the educational needs of the child, the LEA must--
    (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
    (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
  (2) If a determination is made that a child has a disability and needs special education and related services, and parental consent has been obtained, an IEP must be developed for the child in accordance with NC 1503-4.1 through NC 1503-5.1.

(Authority: 20 U.S.C. 1414(b)(4) and (5); 34 CFR 300.306)

NC 1503-3 Additional Procedures for Evaluating Children with Specific Learning Disabilities

NC 1503-3.1 Specific learning disabilities

(a) General. The State has adopted, consistent with NC 1503-3.3, criteria for determining whether a child has a specific learning disability as defined in NC 1500-2.4(c)(11). The criteria –
  (1) Does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in NC 1500-2.4(c)(11).
  (2) Permits the use of a process based on the child's response to scientific, research-based intervention.

(b) Consistency with State criteria. LEAs must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.307)

NC 1503-3.2 Additional group members

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in NC 1500-2.4, must be made by the child's parents and a team of qualified professionals, which must include--

(a) (1) The child's regular teacher; or
  (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
  (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

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

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.308)

NC 1503-3.3 Determining the existence of a specific learning disability

(a) The group described in NC 1503-2.6 may determine that a child has a specific learning disability, as defined in NC 1500-2.4(b)(11), if the child meets the criteria described previously in section NC 1503-2.5(d)(11).

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in NC 1503-2.4 through NC 1503-2.6 -
   (1) Data that demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
   (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in NC 1503-2.1 and NC 1503-2.3 unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in NC 1503-2.6(a)(1) –
   (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction as described in paragraphs (b)(1) and (b)(2) of this section; and
   (2) Whenever a child is referred for evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.309)

NC 1503-3.4 Observation

(a) The LEA must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in NC 1503-2.6(a)(1), in determining whether a child has a specific learning disability, must decide to –
   (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
   (2) Have at least one member of the group described in NC 1503-2.6(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with NC 1503-1(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.310)

NC 1503-3.5 Specific documentation for the eligibility determination

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in NC 1503-2.6(a)(2), must include a statement of--
   (1) Whether the child has a specific learning disability;
   (2) The basis for making the determination, including an assurance that the determination has been made in accordance with NC 1503-2.6(c);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
(4) The educationally relevant medical findings, if any;
(5) Whether –
  (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with NC 1503-3.3(a) or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, or there are strengths and weaknesses in performance or achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with NC 1503-3.3(a); and
  (ii) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with NC 1503-3.3(a);
(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention –
  (i) The instructional strategies used and the student-centered data collected; and
  (ii) The documentation that the child's parents were notified about –
    (A) The State's policies regarding the amount and nature of student performance data collected and the general education services that would be provided;
    (B) Strategies for increasing the child's rate of learning; and
    (C) The parent's right to request an evaluation.

(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 34 CFR 300.311)

NC 1503-4 Individualized Education Programs

NC 1503-4.1 Definition of individualized education program

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with NC 1503-4.1 through NC 1503-5.1, and that must include--
(1) A statement of the child's present levels of academic achievement and functional performance, including--
  (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2) (i) A statement of measurable annual goals, including academic and functional goals designed to --
    (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    (B) Meet each of the child's other educational needs that result from the child's disability.
  (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(iii) For children with disabilities who take alternate assessments based on modified achievement standards, measurable goals aligned to grade level content standards for the student's assigned grade level.

(3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) That periodic reports on the progress the child is making toward meeting the annual goals will be provided concurrent with the issuance of report cards;

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

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

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

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) <u>Transition services</u>.

(1) Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include a statement of initial transition components including the child's needs, preferences and interests, and course(s) of study (such as advanced placement classes or a vocational education program).

(2) Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include –

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services needed to assist the child in reaching those goals, including if appropriate, a statement of interagency responsibilities or any needed linkages.

(c) <u>Transfer of rights at age of majority</u>. Beginning not later than one year before the child reaches the age of majority, which under State law is 18, the IEP must include a statement that the child and their parent have been informed of the rights under Part B of the IDEA, that will transfer to the child upon reaching age 18.

(d) Construction. Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); 34 CFR 300.320)

NC 1503-4.2 IEP team

(a) General. The LEA must ensure that the IEP Team for each child with a disability includes--
- (1) The parent(s) of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the LEA who -
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section:
- (6) At the discretion of the parent(s) or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

(b) Transition services participants.
- (1) In accordance with paragraph (a)(7) of this section, the LEA must invite a child with a disability to attend the IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under NC 1503-4.1(b).
- (2) If the child does not attend the IEP Team meeting, the LEA must take other steps to ensure that the child's preferences and interests are considered.
- (3) To the extent appropriate, with the consent of the parent(s) or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parent(s) or LEA) who invited the individual to be a member of the IEP Team.

(d) Designating an LEA representative. An LEA may designate a school employee who is a member of the IEP Team, to also serve as the LEA representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.
- (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP meeting, in whole or in part, if the parent(s) of a child with a disability and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- (2) A required member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP meeting, in whole or in part, when the meeting involves modification to or discussion of the member's area, if--
  - (i) The parent(s), in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B); 34 CFR 300.321)

NC 1503-4.3 Parent participation

(a) Public agency responsibility--general. Each LEA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
- (1) Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parent(s).
- (1) The notice required under paragraph (a)(1) of this section must--
  - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - (ii) Inform the parent(s) of the provisions in NC 1503-4.2((a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and NC 1503-4.2(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA).
- (2) For each student with a disability beginning at age 14 (or younger if determined appropriate by the IEP team) the notice must also--
  - (i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in NC1503-4.1(b)(1); and
  - (ii) Indicate that the agency will invite the student.
- (3) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, the notice also must--
  - (i) Indicate--
    - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child; and
    - (B) That the agency will invite the student; and
  - (ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with NC 1503-5.4 (related to alternative means of meeting participation).

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parent(s) that they should attend. In this case, the LEA must keep a record of its attempts to arrange a mutually agreed on time and place, such as-
- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parent(s) and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment, if appropriate, and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The LEA must take whatever action is necessary to ensure that the parent(s) understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The LEA must give the parent(s) a copy of the child's IEP at no cost to the parent(s) within a reasonable timeframe following the IEP meeting.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i); 34 CFR 300.322)

NC 1503-4.4 When IEPs must be in effect

(a) General. At the beginning of each school year, each LEA must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in NC 1503-4.1.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five, the IEP Team must consider an IFSP that contains all IFSP content (including the natural environments statement), described in section 636(d) of the IDEA and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures in these Policies. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is –

(i) Consistent with State policy; and

(ii) Is agreed to by the agency and the child's parent(s).

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must –

(i) Provide the child's parent(s) a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parent chooses an IFSP, obtain written informed consent from the parent(s).

(c) Initial IEPs; provision of services.

(1) Each public agency must ensure that within 90 days of receipt of the referral the initial evaluation will be conducted; eligibility determined; and for an eligible child, the IEP developed and placement completed.

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the IEP.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that --

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

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of

(i) His or her specific responsibilities related to implementing the child's IEP; and

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

(e) IEPs for children who transfer public agencies in the same State.

(1) If a child with a disability (who has a current IEP that was in effect in a previous LEA in the State) transfers to a new LEA in the State, and enrolls in a new school, the new LEA, in consultation with the parents, must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous LEA), until the new LEA either --

(i) Adopts the child's IEP from the previous LEA; or

(ii) Develops, adopts, and implements a new IEP that meets the applicable requirements in NC 1503-4.1 through NC 1503-5.1.

(2) A student who has been determined eligible in North Carolina using the response to scientific research-based intervention method continues to be a student with a disability and should not be reevaluated for the sole purpose of re-determining eligibility using the discrepancy method.

(f) IEPs for children who transfer from another State. If a child with a disability (who has a current IEP that was in effect in a previous public agency in another State) transfers to an LEA in North Carolina, and enrolls in a new school, the new LEA (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new LEA --
  (1) Conducts an evaluation pursuant to NC 1503-2.5 through NC 1503-2.6 (if determined to be necessary by the new LEA); and
  (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in NC 1503-4.1 through NC 1503-5.1.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section --
  (1) The new LEA in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous LEA or public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
  (2) The previous LEA or public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)-(C); 34 CFR 300.323)

NC 1503-5 Development of IEP

NC 1503-5.1 Development, review, and revision of IEP

(a) Development of IEP.
  (1) General. In developing each child's IEP, the IEP Team must consider--
    (i) The strengths of the child;
    (ii) The concerns of the parents for enhancing the education of their child;
    (iii) The results of the initial or most recent evaluation of the child; and
    (iv) The academic, developmental, and functional needs of the child.
  (2) Consideration of special factors. The IEP Team must--
    (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
    (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
    (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team 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;
    (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, 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 language and communication mode; and
    (v) Consider whether the child needs assistive technology devices and/or services.
  (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with NC 1503-4.1(a)(4).

(4) Agreement.
(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. A parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs
(1) General. Each LEA must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—
(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
(ii) Revises the IEP, as appropriate, to address--
(A) Any lack of expected progress toward the annual goals described in NC 1503-4.1(a)(2), and in the general education curriculum, if appropriate;
(B) The results of any reevaluation conducted under NC 1503-2.3;
(C) Information about the child provided to, or by, the parents, as described in NC 1503-2.5(a)(2);
(D) The child's anticipated needs; or
(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives.
(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with NC 1503-4.1(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons.
(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
(i) The requirements contained in section 612(a)(16) of the IDEA and NC 1503-4.1(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in NC 1502-4.1(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of NC 1503-4.1 (relating to IEPs), and NC 1501-2.10 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3),(4)(B), and(7); and 1414(e); 34 CFR 300.324)

NC 1503-5.2 Private school placements by LEAs

(a) Developing IEPs.

(1) Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA must initiate and conduct a meeting to develop an IEP for the child in accordance with NC 1502-4.1 through NC 1503-5.1.

(2) The LEA must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(2) If the private school or facility initiates and conducts these meetings, the LEA must ensure that the parents and an agency representative--

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B); 34 CFR 300.325)

NC 1503-5.3 Educational placements

Consistent with NC 1504-1.2(c) each LEA must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(Authority: 20 U.S.C. 1414(e); 34 CFR 300.327)

NC 1503-5.4 Alternative means of meeting participation

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the IDEA (such as scheduling,

exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f); 34 CFR 300.328)

NC 1504 PROCEDURAL SAFEGUARDS

NC 1504 -1 Due Process Procedures

NC 1504-1.1 Responsibility of SEA and LEA

The SEA must ensure that each LEA establishes, maintains, and implements procedural safeguards that meet the requirements of NC 1504-1.1 through NC 1504-2.7.

(Authority: 20 U.S.C. 1415(a); 34 CFR 300.500)

NC 1504-1.2 Opportunity to examine records; parent participation in meetings

(a) Opportunity to examine records. The parent of a child with a disability must be afforded, in accordance with the procedures of NC 1505-1 through NC 1504-2.7, an opportunity to inspect and review all education records with respect to--
   (1) The identification, evaluation, and educational placement of the child; and
   (2) The provision of FAPE to the child.

(b) Parent participation in meetings.
   (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
      (i) The identification, evaluation, and educational placement of the child; and
      (ii) The provision of FAPE to the child.
   (2) Each LEA must provide notice consistent with NC 1503-4.3(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
   (3) A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.
   (1) Each LEA must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
   (2) In implementing the requirements of paragraph (c)(1) of this section, the LEA must use procedures consistent with the procedures described in NC 1503-4.3(a) through (b)(1).
   (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
   (4) A placement decision may be made by a group without the involvement of a parent, if the LEA is unable to obtain the parent's participation in the decision. In this case, the LEA must have a record of its attempt to ensure their involvement.

(Authority: 20 U.S.C. 1414(e), 1415(b)(1); 34 CFR 300.501)

NC 1504-1.3 Independent educational evaluation

(a) General.
   (1) The parents of a child with a disability have the right under these Policies to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each LEA must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question; and

(ii) Public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with NC 1501-2.1.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either--

(i) File for a due process hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing, pursuant to NC 1504-1.8 through NC 1504-1.14 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process petition to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(6) The results of any independent educational evaluation obtained at public expense must be provided to the LEA.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A); 34 CFR 300.502)

NC 1504-1.4 Prior notice by the LEA; content of notice

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the LEA--
  (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include--
  (1) A description of the action proposed or refused by the LEA;
  (2) An explanation of why the LEA proposes or refuses to take the action;
  (3) A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
  (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
  (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  (7) A description of other factors that are relevant to the LEA's proposal or refusal.

(c) Notice in understandable language.
  (1) The notice required under paragraph (a) of this section must be--
    (i) Written in language understandable to the general public; and
    (ii) 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.
  (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--
    (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
    (ii) That the parent understands the content of the notice; and
    (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1); 34 CFR 300.503; 115C-109.5)

NC 1504-1.5 Procedural safeguards notice

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents--
  (1) Upon initial referral or parent request for evaluation;
  (2) Upon receipt of the first State complaint under NC 1501-10.1 through NC 1501-10.3 and upon receipt of the first petition for due process hearing under NC 1504-1.8 in a school year;
  (3) In accordance with the discipline procedures in NC 1504-2;

(4) Upon request by a parent; and
(5) Upon any revision to the content of the procedural safeguards notice.

(b) Internet Web site.
(1) The State Board shall place a current copy of the procedural safeguards notice on its Internet Web site.
(2) An LEA may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under NC 1501-8.1, NC 1501-10.1 through NC 1501-10.3, NC 1503-1, NC 1504-1.3 through NC 1504-1.4, NC 1504-1.6 through NC 1504-1.19, NC 1504-1.21, NC 1504-2.1 through NC 1504-2.7, and NC 1505-2.1 through NC 1505-2.16 relating to--
(1) Independent educational evaluations;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present and resolve complaints through the due process hearing and State complaint procedures, including--
(i) The time period in which to file a complaint or petition for a due process hearing;
(ii) The opportunity for the agency to resolve the complaint or petition for due process hearing issues; and
(iii) The difference between the petition for due process hearing and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
(6) The availability of mediation;
(7) The child's placement during the pendency of due process hearing;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on petitions for due process hearings, including requirements for disclosure of evaluation results and recommendations;
(11) Civil actions, including the time period in which to file those actions; and
(12) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of NC 1504-1.4(c).

(Authority: 20 U.S.C. 1415(d)(1) and (2); 3 CFR 300.504; 115C-109.1)

NC 1504-1.6 Electronic mail

A parent of a child with a disability may elect to receive notices required in NC 1504-1.4, NC 1504-1.5, and NC 1504-1.9 by an electronic mail communication, if the LEA makes that option available.

(Authority: 20 U.S.C. 1415(n); 34 CFR 300.505)

NC 1504-1.7 Mediation

(a) General. Each LEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under these Policies, including matters arising prior to the filing of a petition for a due process hearing, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--
  (i) Is voluntary on the part of the parties;
  (ii) Is not used to deny or delay a parent's right to a hearing on the parent's request for a due process hearing, or to deny any other rights afforded under Part B of the IDEA; and
  (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) An LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--
  (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State under sections 671 or 672 of the IDEA; and
  (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The SEA must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
  (ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The SEA must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--
  (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
  (ii) Is signed by both the parent and a representative of the LEA who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable by the SEA through the State complaint process, in any State court of competent jurisdiction, or in a district court of the United States.

(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under the IDEA.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under these Policies--
  (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
  (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e); 34 CFR 300.506; 115C-109.4)

NC 1504-1.8 Filing a petition for a due process hearing

(a) General.
  (1) A parent or an LEA may file a request for a due process hearing on matters related to the identification, evaluation or educational placement of a child with a disability, the provision of FAPE to the child or a manifestation determination.
  (2) The petition for a due process hearing must allege a violation that occurred not more than one year before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process petition, except that the exceptions that apply to the timelines described in NC 1504-1.4(a)(1) and (2) apply to the timeline in this section.
  (3) A parent may not file a petition on behalf of a student who has reached the age of majority unless the court has granted guardianship to the parent.

(b) Information for parents. The LEA must inform the parent of any free or low-cost legal and other relevant services available in the area if--
  (1) The parent requests the information; or
  (2) The parent or the LEA files a petition for a due process hearing under this section.

(Authority: 20 U.S.C. 1415(b)(6); 34 CFR 300.507; 115C-109.6)

NC 1504-1.9 Due process hearing

(a) General.
  (1) A petition for a due process hearing must be filed with the other party and the Office of Administrative Hearings. Parents filing a petition for a due process hearing must also file with the Superintendent or the Director of Special Education (Exceptional Children Director) of the LEA or public agency.
    (i) The due process hearing timelines begin upon the other party's receipt of the petition.
    (ii) The petition for a due process hearing must remain confidential.
  (2) The party filing a petition for a due process hearing must simultaneously send a copy of the request for a due process hearing to the Consultant for Dispute Resolution at the North Carolina Department of Public Instruction, Exceptional Children Division.

(b) Content of due process hearing request. The petition for a due process hearing required in paragraph (a)(1) of this section must include--
  (1) The name of the child;
  (2) The address of the residence of the child;
  (3) The name of the school the child is attending;
  (4) In the case of a homeless child or youth, (with the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
  (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
  (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a due process hearing. A party may not have a due process hearing until the party, or the attorney representing the party, files a petition for a due process hearing that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of request.
  (1) The petition for a due process hearing required by this section must be deemed sufficient unless the party receiving the petition for a due process hearing notifies the hearing officer and the other party in writing, within 15 days of receipt of the petition, that the receiving

party believes the petition for a due process hearing does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the petition for a due process hearing of whether the petition meets the content requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its petition for a due process hearing only if--

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing issues through a meeting held pursuant to NC 1504-1.11; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended petition for a due process hearing, the timelines for the resolution meeting in NC 1504-1.11(a) and the time period to resolve in NC 1504-1.11(b) begin again with the filing of the amended petition.

(e) LEA response to a petition for a due process hearing.

(1) If the LEA has not sent a prior written notice under NC 1504-1.4 to the parent regarding the subject matter contained in the parent's petition for a due process hearing, the LEA must, within 10 days of receiving the petition, send to the parent a response that includes--

(i) An explanation of why the LEA proposed or refused to take the action raised in the petition for a due process hearing;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the LEA's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's petition for a due process hearing was insufficient, where appropriate.

(f) Other party's response to a petition for a due process hearing. Except as provided in paragraph (e) of this section, the party receiving a petition for a due process hearing must, within 10 days of receiving the petition, send to the other party a response that specifically addresses the issues raised in the petition for a due process hearing.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2); 34 CFR 300.508; 115C-109.6)

NC 1504-1.10 Model forms

(a) The SEA has developed model forms to assist parents and public agencies in filing a petition for a due process hearing in accordance with NC 1504-1.8(a) and NC 1504-1.9(a) through (c) and to assist parents and other parties in filing a State complaint under NC 15001-10.1 through NC 1501-10.3. Use of the model form is not required.

(b) Parents, LEAs, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in NC 1504-1.9(b) for filing a petition for a due process hearing, or the requirements in NC 1501-10.3(b) for filing a State complaint.

(Authority: 20 U.S.C. 1415(b)(8); 34 CFR 300.509)

NC 1504-1.11 Resolution process

(a) Resolution meeting.
- (1) Within 15 days of receiving notice of a parent's petition for a due process hearing, and prior to the initiation of a due process hearing under NC 1504-1.12, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the petition that--
  - (i) Includes a representative of the LEA who has decision-making authority on behalf of that LEA; and
  - (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. If the parent plans to be accompanied by an attorney under this section, the parent must give prior notice of this fact to the LEA.
- (2) The purpose of the meeting is for the parent of the child to discuss the issues and facts in the due process petition so that the LEA has the opportunity to resolve the dispute that is the basis for the petition for a due process hearing.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
  - (i) The parent and the LEA agree in writing to waive the meeting; or
  - (ii) The parent and the LEA agree to use the mediation process described in NC 1504-1.7.
- (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.
- (1) If the LEA has not resolved the issues of the due process hearing petition to the satisfaction of the parent within 30 days of the receipt of the due process petition, the due process hearing may occur.
- (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under NC 1504-1.16 begins at the expiration of this 30-day period.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a petition for a due process hearing to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using procedures in NC 1503-4.3(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process petition.
- (5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's petition for a due process hearing or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in NC 1504-1.16(a) starts the day after one of the following events:
- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
- (1) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, through the State complaint process, pursuant to NC 1504-2.8.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B); 34 CFR 300.510; 115C-109.7)

NC 1504-1.12 Impartial due process hearing

(a) General. Whenever a request for a due process hearing is received under NC 1504-1.8 or NC 1504-2.3, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in NC 1504-1.8, NC 1504-1.9 and NC 1504-1.11.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the Office of Administrative Hearings, as determined under State statute. The hearing shall be conducted in the county where the child attends school or is entitled to enroll under General Statutes 115C-366, unless the parties mutually agree to a different venue.

(c) Administrative Law Judges serve as impartial hearing officers in North Carolina.

(1) At a minimum, an Administrative Law Judge--

(i) Must not be--

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process petition filed under NC 1504-1.9, unless the other party agrees.

(e) Timeline for requesting a hearing. A parent or an LEA must request an impartial due process hearing within one year of the date the parent or the LEA knew or should have known about the alleged action that forms the basis of the due process petition.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process petition due to--

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process petition; or

(2) The LEA's withholding of information from the parent that was required by these Policies to be provided to the parent.

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D); 34 CFR 300.511; 115C-109.6)

NC 1504-1.13 Hearing rights

(a) General. Any party to a hearing conducted pursuant to NC 1504-1.8 through NC 1504-1.14 or NC 1504-2.1 through NC 1504-2.5, or an appeal conducted pursuant NC 1504-1.15 has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. However, NC law prohibits a non-attorney from representing a party at a due process hearing.
(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.
(1) At least five business days prior to a hearing conducted pursuant to NC 1504-1.12(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--
(1) Have the child who is the subject of the hearing present;
(2) Open the hearing to the public (parents electing to open the hearing to the public should provide written notice to the Administrative Law Judge and the other party); and
(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h); 34 CFR 300.512; 155C-109.6)

NC 1504-1.14 Hearing decisions

(a) Decision of hearing officer on the provision of FAPE.
(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether the child received FAPE must be based on substantive grounds.
(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies--
(i) Impeded the child's right to FAPE;
(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or
(iii) Caused a deprivation of educational benefit.
(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under NC 1504-1.1 through NC 1504-2.7.

(b) Construction clause. Nothing in NC 1504-1.8 through NC 1504-1.14 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA.

(c) Separate request for a due process hearing. Nothing in NC 1504-1.1 through NC 1504-2.7 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--
(1) Transmit the findings and decisions referred to NC 1504-1.13(a)(5) to the State advisory panel established under NC 1501-13.1; and
(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o); 34 CFR 300.513; 115C-109.8)

NC 1504-1.15 Finality of decision; appeal; impartial review

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant NC 1504-1.8 through NC 1504-1.14 or NC 1504-2.1 through NC 1504-2.5 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and NC 1504-1.7.

(b) Appeal of decisions; impartial review.
- (1) The hearing required by NC 1504-1.12 is conducted by the Office of Administrative Hearings. Any party aggrieved by the findings and decision in the hearing may appeal to the North Carolina Department of Public Instruction, Exceptional Children Division within 30 days of receipt of the written decision.
- (2) If there is an appeal, the SEA must appoint an impartial review officer to conduct an impartial review of the findings and decision appealed. The official conducting the review must--
  - (i) Examine the entire hearing record;
  - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
  - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in NC 1504-1.13 apply;
  - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
  - (v) Make an independent decision upon completion of the review; and
  - (vi) At the request of the parents, provide an electronic findings of fact and decision to the parties and attorneys of record.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--
- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under NC 1501-13.1; and
- (2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under NC 1504-1.17.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2); 34 CFR 300.514)

NC 1504-1.16 Timelines and convenience of hearings and reviews

(a) The SEA must ensure that not later than 45 days after the expiration of the 30 day period under NC 1504-1.11(b) or the adjusted time periods described in NC 1504-1.11(c)--
- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--
- (1) A final decision is reached in the review; and
- (2) A certified copy of the decision is mailed to each of the parties and the attorneys of records.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1); 34 CFR 300.515; 115C-109.9)

NC 1504-1.17 Civil action

(a) General. Any party aggrieved by the findings and decision made under NC 1504-1.8 through NC 1504-1.14 or NC 1504-2.1 through NC 1504-2.5 who does not have the right to an appeal under NC 1504-1.15(b), and any party aggrieved by the findings and decision under NC 1504-1.15(b), has the right to bring a civil action with respect to the due process hearing petition under NC 1504-1.8 or NC 1504-2.1 through NC 1504-2.3. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 30 days from the date of the receipt of the decision of the State review official to file a civil action.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court--
   (1) Receives the records of the administrative proceedings;
   (2) Hears additional evidence at the request of a party; and
   (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the procedures under NC 1504-1.8 and NC 1504-1.15 must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l); 3 CFR 300.516)

NC 1504-1.18 Attorneys' fees

(a) In general. In any action or proceeding brought under section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--
   (1) The prevailing party who is the parent of a child with a disability;
   (2) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a petition for a due process hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
   (3) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Prohibition on use of funds.
   (1) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the IDEA.
   (2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the IDEA consistent with the following:
   (1) Fees awarded under section 615(i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if--
  (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
  (B) The offer is not accepted within 10 days; and
  (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
  (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action.
  (iii) A meeting conducted pursuant to NC 1504-1.11 shall not be considered--
  (A) A meeting convened as a result of an administrative hearing or judicial action; or
  (B) An administrative hearing or judicial action for purposes of this section.
(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that--
  (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
  (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with NC 1504-1.9.
(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G); 34 CFR 300.517)

NC 1504-1.19 Child's status during proceedings

(a) Except as provided in NC 1504-2.4, during the pendency of any administrative or judicial proceeding regarding a petition requesting a due process hearing under NC 1504-1.8, unless the State or LEA and the parents of the child agree otherwise, the child involved in the hearing must remain in his or her current educational placement.
(b) If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
(c) If the hearing involves an application for initial services under these Policies from a child who is transitioning from Part C to Part B and is no longer eligible for Part C services because the child has turned 3, the LEA is not required to provide the Part C services that the child had been receiving. If he child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under NC 1500-1(b), then the LEA must provide those special education and related services that are not in dispute between the parent and the LEA.

(d) If the hearing officer in a due process hearing conducted by the Office of Administrative Hearings or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j); 34 CFR 300.518)

NC 1504-1.20 Surrogate parents

(a) General. Each LEA must ensure that the rights of a child are protected when--
  (1) No parent (as defined in NC 1500-2.24) can be identified;
  (2) The LEA, after reasonable efforts, cannot locate a parent;
  (3) The child is a ward of the State under the laws of North Carolina and the parents' rights have been terminated or their rights to make educational decisions have been terminated by the court; or
  (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of an LEA under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--
  (1) For determining whether a child needs a surrogate parent; and
  (2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d) and (e) of this section.

(d) Criteria for selection of surrogate parents. LEAs must ensure that a person selected as a surrogate parent--
  (1) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child, such as the Department of Health and Human Services, a group home, or a therapeutic foster parent;
  (2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  (3) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to--
  (1) The identification, evaluation, and educational placement of the child; and
  (2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after an LEA determines that the child needs a surrogate.

(Authority: 20 U.S.C. 1415(b)(2); 34 CFR 300.519)

NC 1504-1.21 Transfer of parental rights at age of majority

(a) General. When a child with a disability reaches the age of 18 (except for a child with a disability who has been determined to be incompetent under State law)--
- (1) (i) The LEA must provide any notice required by these Policies to both the individual and the parents; and
  - (ii) All other rights accorded to parents under Part B of the IDEA transfer to the child.
- (2) All rights accorded to parents under Part B of the IDEA transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
- (3) The LEA must notify the individual and the parents of the transfer of rights.

(b) Special rule.
- (1) When a child with a disability is determined not to have the ability to exercise his/her rights under these Policies, the LEA must provide the parent notice of options listed in sub-section (b)(2)(i-iii) of this section.
- (2) A student who has reached the age of 18 shall be presumed to be a competent adult unless one of the following actions has been taken:
  - (i) The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
  - (ii) The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local education agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;
  - (iii) The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is eligible for special education under this section and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed to act on the adult student's behalf. An educational representative may be appointed based on the following conditions and procedures:
    - (A) Two professionals (one from list one and one from list two, as set forth in the following descriptions) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
      - a. List one includes:
        1. a medical doctor licensed in the state where the doctor practices medicine;
        2. physician's assistant whose certification is countersigned by a supervising physician; or
        3. a certified nurse practitioner.
      - b. List two includes:
        1. a medical doctor licensed in the state where the doctor practices medicine;
        2. a licensed clinical psychologist;
        3. a licensed clinical social worker;
        4. an attorney who is qualified to serve as a guardian ad litem for adults under NC law; or
        5. a court-appointed special advocate for the adult student.

(B) The individuals who provide the certification in (iii)(A) of this section may not be employees of the local education agency currently serving the adult student or related by blood or marriage to the adult student.

(C) If an adult student has been determined to be incompetent through any of the procedures described in this section, the parent shall be appointed to act as the educational representative for the adult student. If the parent is not available, an adult family member with whom the adult student resides may be appointed. If the adult student does not reside with an adult family member, a person trained as a surrogate parent shall be appointed to serve as the educational representative for the adult student.

(iv) Incapable of providing informed consent, as used in this section, means that the adult student is unable to:

(A) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(B) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(C) Communicate such understanding in any meaningful way.

(v) The certification that an adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the student's eighteenth birthday.

(vi) The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

(vii) The adult student's ability to provide informed consent must be recertified at any time that the previous certification is challenged. Challenges can be made by the adult student or by anyone with a bona fide interest in and knowledge of the adult student, except that challenges cannot be made by employees of the LEA. Upon receipt of a written challenge, the LEA may not rely on the appointed representative until a new certification that the adult student is unable to provide informed consent has been obtained by the appointed educational representative.

(Authority: 20 U.S.C. 1415(m); 34 CFR 300.520)

NC 1504-2 Discipline Procedures

NC 1504-2.1 Authority of school personnel

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. Circumstances considered should include area of disability, functioning level of the child, intent of the behavior, and other relevant factors.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), 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 those removals do not constitute a change of placement under NC 1504-2.7).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c) or (g) of this section must--

(i) Continue to receive educational services, as provided in NC 1501-1.1(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. If a behavioral intervention plan already has been developed, it must be reviewed and modified, as necessary, to address the behavior.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under NC 1504-2.7, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided NC 1501-1.1 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under NC 1504-2.7, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

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

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--
  (1) Either-–
    (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA, through the IEP Team process, agree to a change of placement.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting 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--
  (1) Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA;
  (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
  (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
  (4) Upon the end of the removal to the interim alternative educational setting for not more than 45 school days for reasons (1) through (3) above, the child shall be returned to the placement from which he/she was removed, unless the parent and the LEA, through the IEP Team process, agree to a change of placement.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in NC 1504-1.5.

(i) Definitions. For purposes of this section, the following definitions apply:
  (1) Controlled substances means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
  (3) Serious bodily injury is defined as:
  Bodily injury which involves –
    (i) a substantial risk of death;
    (ii) extreme physical pain;
    (iii) protracted and obvious disfigurement; or
    (iv) protracted loss or impairment of function of a bodily member, organ, or mental faculty. (20 U.S.C. 1415(k)(7)(D) and 18 U.S.C. 1365(h)(3)).
  (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code and includes a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such a term does not include a pocket knife with a blade of less than 2 ½ inches in length.

(Authority: 20 U.S.C. 1415(k)(1) and (7); 34 CFR 300.530)

NC 1504-2.2 Determination of setting

The child's IEP Team determines the interim alternative educational setting for services under NC 1504-2.1(c),(d)(5),and(g).

(Authority: 20 U.S.C. 1415(k)(2); 34 CFR 300.531)

NC 1504-2.3 Appeal

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under NC 1504-2.1 and NC 1504-2.2, or the manifestation determination under NC 1504-2.1(e), or an LEA that believes that 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 a due process hearing. The hearing is requested by filing a petition pursuant to NC 1504-1.8 and NC 1504-1.9(a) and (b).

(b) Authority of hearing officer.
- (1) A hearing officer under NC 1504-1.12 hears, and makes a determination regarding an appeal requested under paragraph (a) of this section.
- (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may--
  - (i) 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 NC 1504-2.1 or that the child's behavior was a manifestation of the child's disability; or
  - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.
- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of NC 1504-1.8 and NC 1504-1.9(a) through (c) and NC 1504-1.11 through NC 1504-1.15, except as provided in paragraph (c)(2) through (4) of this section.
- (2) The Office of Administrative Hearings is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the petition requesting the hearing is received by the other party. The hearing officer must make a determination within 10 school days after the hearing.
- (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in NC 1504-1.7–-
  - (i) A resolution meeting must occur within seven days of the other party's receiving notice of the due process petition, and
  - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the other party's receipt of the due process petition.
- (4) The decisions on expedited due process hearings are appealable consistent with NC 1504-1.15.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A); 34 CFR 300.532)

NC 1504-2.4 Placement during appeals

When an appeal under NC 1504-2.3 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in NC 1504-2.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A); 34 CFR 300.533)

NC 1504-2.5 Protections for children not yet eligible for special education and related services

(a) General. A child who has not been determined to be eligible for special education and related services under these Policies and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in these Policies if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--
  (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the LEA, or a teacher of the child, that the child is in need of special education and related services;
  (2) The parent of the child requested an evaluation of the child pursuant to NC 1503-1 through NC 1503-3.5; or
  (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

(c) Exception. An LEA would not be deemed to have knowledge under paragraph (b) of this section if--
  (1) The parent of the child--
    (i) Has not allowed an evaluation of the child pursuant to NC 1503-1 through NC 1503-3.5; or
    (ii) Has refused services under these Policies; or
  (2) The child has been evaluated and determined to not be a child with a disability under these Policies.

(d) Conditions that apply if no basis of knowledge.
  (1) If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
  (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under NC 1504-2.1, the evaluation must be conducted in an expedited manner.
    (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
    (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by

the parents, the LEA must provide special education and related services in accordance with these Policies, including the requirements of NC 1504-2.1 through NC 1504-2.7 and sections 612(a)(1)(A) of the IDEA.

(Authority: 20 U.S.C. 1415(k)(5); 34 CFR 300.534)

NC 1504-2.6 Referral to and action by law enforcement and judicial authorities

(a) Rule of construction. Nothing in this part prohibits an LEA from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.
  (1) An LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the LEA reports the crime.
  (2) An LEA reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6); 34 CFR 300.535)

NC 1504-2.7 Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under NC 1504-2.1 through NC 1504-2.6, a change of placement occurs if--
  (1) The removal is for more than 10 consecutive school days; or
  (2) The child has been subjected to a series of removals that constitute a pattern--
    (i) Because the series of removals total more than 10 school days in a school year;
    (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
    (iii) Because of such additional factors 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.

(b) (1) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change in placement.
  (2) This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k); 34 CFR 300.536)

NC 1504-2.8 State enforcement mechanisms

Notwithstanding NC 1504-1.7(b)(7) and NC 1504-1.11(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, enforcement of such agreements may also be sought through the State complaint investigation process.

(Authority: 20 U.S.C. 1415(e)(2)(f), 1415(f)(1)(B); 34 CFR 300.537)

NC 1504-2.9 Discipline and homebound instruction

(a) If a change of placement occurs under the discipline requirements of these Policies, an LEA shall not assign a student to homebound instruction without a determination by the student's IEP Team

that the homebound instruction is the least restrictive alternative environment for that student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the continued appropriateness of the homebound instruction shall be evaluated monthly by the designee or designees of the student's IEP Team.

(b) "Educational services" means all of the following:

(1) The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and State law. The instruction shall be delivered by appropriately qualified teachers to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.

(2) Related services including in the child's IEP.

(3) Behavior intervention services to the extent required above NC 1504-2.1 (d) and (f).

(c) "Homebound instruction" means educational services provided to a student outside the school setting.

(Authority: Article 9 of Chapter 115C-107.7; 106.3 as amended)

NC 1505 MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

NC 1505-1 Monitoring, Technical Assistance, and Enforcement

NC 1505-1.1 Monitoring and enforcement

(a) The State must -
  (1) Monitor the implementation of this part;
  (2) Make determinations annually about the performance of each LEA using the categories in NC 1505-1.4 (b)(1);
  (3) Enforce this part, consistent with NC 1505-1.5, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in NC 1505-1.5 (a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and
  (4) Report annually on the performance of the State and of each LEA under this part, as provided in NC 1505-1.3 (b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State's monitoring activities must be on--
  (1) Improving educational results and functional outcomes for all children with disabilities; and
  (2) Ensuring that LEAs meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
  (1) Provision of FAPE in the least restrictive environment;
  (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services; and
  (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent that the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

(Authority: 20 U.S.C. 1416(a); 34 CFR 300.600)

NC 1505-1.2 LEA continuous improvement performance plans and data collection

(a) General. Each LEA must have in place a continuous improvement performance plan that evaluates the LEA's efforts to implement the requirements and purposes of Part B of the IDEA, and describes how the LEA will improve such implementation.
  (1) Each LEA must submit their continuous improvement performance plan annually to the SEA for approval.

(2) As part of the continuous improvement performance plan, each LEA must establish measurable and rigorous targets for the indicators established by the SEA under the priority areas described in NC 1505-1.1.

(b) Data collection. Each LEA must collect valid and reliable information as needed to report annually to the SEA on the indicators established by the SEA for the LEA continuous improvement performance plans.

(Authority: 20 U.S.C. 1416(b); 34 CFR 300.601)

NC 1505-1.3 Use of targets and reporting

(a) General. The SEA must use the targets established in the State's performance plan and the priority areas described NC 1505-1.1(d) to analyze the performance of each LEA.

(b) Public reporting and privacy.

(1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the State must--

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) if this section; and

(B) Make each of the following items available through public means: the State's performance plan, under NC 1505-1.2 (a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's website, and distribute the plan and reports to the media and through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) Privacy. The State must not report to the public any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Authority: 20 U.S.C. 1416(b)(2)(C); 34 CFR 300.602)

NC 1505-1.4 Review and determination regarding performance

(a) Review. The Secretary annually reviews the SEA performance report submitted pursuant to NC 1505-1.3(B)(2).

(b) Determination.

(1) General. Based on the information provided by the SEA in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State--

(i) Meets the requirements and purposes of Part B of the IDEA;

(ii) Needs assistance in implementing the requirements of Part B of the IDEA;

(iii) Needs intervention in implementing the requirements of Part B of the IDEA; or

(iv) Needs substantial intervention in implementing the requirements of Part B of the IDEA.

(2) Notice and opportunity for a hearing.

(i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1416(d); 34 CFR 300.603)

NC 1505-1.5 Enforcement

(a) Needs assistance. If the Secretary determines, for two consecutive years, that the State needs assistance NC 1505-1.4(b)(1)(ii) in implementing the requirements of Part B of the IDEA, the Secretary takes one or more of the following actions:

(1) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include--

(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the IDEA, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under Section 611(e) of the IDEA on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the IDEA.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that the State needs intervention under NC 1505-1.4(b)(1)(iii) in implementing the requirements of Part B of the IDEA, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the IDEA, until the

Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the IDEA.

(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that the State needs substantial intervention in implementing the requirements of Part B of the IDEA or that there is a substantial failure to comply with any condition of the SEA's or LEA's eligibility under Part B of the IDEA, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the IDEA.

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)-(e)(3), (e)(5); 34 CFR 300.604)

NC 1505-1.6 Withholding funds

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the IDEA, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in 34 CFR 300.180 through 34 CFR 300.183 .

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the IDEA, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the IDEA should not be suspended.

(c) Nature of withholding.

(1) If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the IDEA, the Secretary may determine--

(i) That the withholding will be limited to programs or projects, or portions of programs or projects that affected the Secretary's determination under NC 1505-1.4(b)(1); or

(ii) That the SEA must not make further payments under Part B of the IDEA to specified State agencies or LEAs that caused or were involved in the Secretary's determination under NC 1505-1.4(b)(1).

(2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--

(i) Payments to the State under Part B of the IDEA must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the IDEA must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under NC 1505-1.4(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(e)(4), (e)(6); 34 CFR 300.605)

NC 1505-1.7 Public attention

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to NC 1505-1.5, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to NC 1505-1.5, including, at a minimum, by posting the notice on the SEA website and distributing the notice to the media and through public agencies.

(Authority: 20 U.S.C. 1416(e)(7); 34 CFR 300.606)

NC 1505-1.8 Divided State agency responsibility.

For purposes of this part, if responsibility for ensuring that the requirements of Part B of the IDEA are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to NC 1501-9.1 , and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the IDEA are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the IDEA, except that--

(a) Any reduction or withholding of payments to the State under NC 1505-1.5 must be proportionate to the total funds allotted under section 611 of the IDEA to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under NC 1505-1.5 must be limited to the specific agency responsible for the failure to comply with Part B of the IDEA.

(Authority: 20 U.S.C. 1416(h); 34 CFR 300.607)

NC 1505-1.9 State enforcement

(a) A system of incentives and sanctions has been implemented for LEAs in order to improve results for children with disabilities and meet the requirements of the IDEA. The system shall:
   (1) Identify and recognize LEAs that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each LEA.
   (2) Provide consequences for LEAs that are substantially noncompliant with statutory and regulatory requirements.

(b) The system of incentives may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(c) The system of sanctions shall include the following:
   (1) <u>Level One – Needs Assistance:</u> When it is determined that an LEA has been in noncompliance for two years, and the LEA needs assistance in implementing the requirements of IDEA, one or more of the following actions shall be taken:
      (i) The LEA may be directed to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.
      (ii) Special conditions may be imposed on the LEA's application for IDEA funds and receipt of State funds.
      (iii) The use of IDEA and State funds may be directed to address the remaining areas of non-compliance.

(iv) The LEA must track the use of these funds to show how the funds are targeted to address areas of noncompliance.

(2) Level Two – Needs Intervention: When it is determined that an LEA has been in noncompliance for three years, and the LEA needs assistance in implementing the requirements of IDEA, the following apply:
   (i) Any of the actions described in (c)(1) of this section may be taken.
   (ii) Any further payment of IDEA and State funds to the LEA shall be withheld, in whole or in part.
   (iii) The LEA shall be required to enter into a corrective action plan.

(3) Level Three – Needs Substantial Intervention: In addition to the sanctions described in (c)(1) and (c)(2) of this section, if it is determined that an LEA needs substantial intervention in implementing the requirements of IDEA, one or more of the following actions shall be taken:
   (i) The LEA shall be directed to implement a compliance agreement, billed to the LEA.
   (ii) IDEA and State funds shall be recovered.
   (iii) The LEA shall be referred for appropriate enforcement under State or federal law.

(4) In addition to the consequences required under (c) of this section, sanctions shall be applied to all LEAs that fail to implement a corrective action or hearing decision.

(5) Additionally, if the SEA determines that an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the State performance plan, the SEA must prohibit the LEA from reducing its maintenance of effort under NC 1502-4 for any fiscal year.

(Authority: 20 U.S.C. 1416(f); 34 CFR 300.608; 115C-107.4)

NC 1505-1.10 Rule of construction

Nothing in this part shall be construed to restrict the Secretary from using any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the IDEA, including the imposition of special conditions under 34 CFR 80.12.

(Authority: 20 U.S.C. 1416(g); 34 CFR 300.609)

NC 1505-2 Confidentiality of Information

NC 1505-2.1 Confidentiality

The Secretary takes appropriate action, in accordance with section 444 of the GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by the SEA and LEAs pursuant to Part B of the IDEA, and consistent with NC 1505-2.2 through NC 1505-2.18.

(Authority: 20 U.S.C. 1417(c); 34 CFR 300.610)

NC 1505-2.2 Definitions

As used in NC 1505-2.2 through NC 1505-2.16--

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c); 34 CFR 300.611)

NC 1505-2.3 Notice to parents

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of NC 1501-4.3, including--
   (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
   (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the SEA intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
   (3) A summary of the policies and procedures that LEAs must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
   (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.612)

NC 1505-2.4 Access rights

(a) Each LEA must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the LEA under these Policies. The LEA must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to NC 1504-1.8 or NC 1504-2.1 through NC 1504-2.3, or resolution session pursuant to NC 1504-1.11 and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--
   (1) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
   (2) The right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
   (3) The right to have a representative of the parent inspect and review the records.

(c) An LEA may presume that the parent has authority to inspect and review records relating to his or her child unless the LEA has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.613)

NC 1505-2.5 Record of access

Each LEA must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the LEA),

including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.614)

NC 1505-2.6 Records on more than one child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.615)

NC 1505-2.7 List of types and locations of information

Each LEA must provide parents on request a list of the types and locations of education records collected, maintained, or used by the LEA.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.616)

NC 1505-2.8 Fees

(a) Each LEA may charge a fee for copies of records that are made for parents under these Policies if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
(b) An LEA may not charge a fee to search for or to retrieve information under these Policies.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.617)

NC 1505-2.9 Amendment of records at parent's request

(a) A parent who believes that information in the education records collected, maintained, or used under these Policies is inaccurate or misleading or violates the privacy or other rights of the child may request the LEA that maintains the information to amend the information.
(b) The LEA must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
(c) If the LEA decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under NC 1505-2.10.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.618)

NC 1505-2.10 Opportunity for a hearing

The LEA must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 3 CFR 300.619)

NC 1505-2.11 Result of hearing

(a) If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
(b) If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA.
(c) Any explanation placed in the records of the child under this section must--
  (1) Be maintained by the LEA as part of the records of the child as long as the record or contested portion is maintained by the LEA; and
  (2) If the records of the child or the contested portion are disclosed by the LEA to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.620)

NC 1505-2.12 Hearing procedures

A hearing held under NC 1505-2.10 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.621)

NC 1505-2.13 Consent

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in educational records, and the disclosure is authorized without parental consent under 34 part CFR 99.
(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
  (2) Parental consent or the consent of the eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with NC 1503-4.2(b)(3).
  (3) If a child is enrolled or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between the officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.622)

NC 1505-2.14 Safeguards

(a) Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
(b) One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information.
(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under NC 1501-4.3 and 34 CFR part 99.
(d) Each LEA must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.623)

NC 1505-2.15 Destruction of information

(a) The LEA must inform parents when personally identifiable information collected, maintained, or used under these Policies is no longer needed to provide educational services to the child.
(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
(c) The LEA shall inform parents that the personally identifiable information to be destroyed may be needed by the parent or the child for social security benefits, legal defense, or other purposes. At the parent's request, a copy of the record shall be provided.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.624)

NC 1505-2.16 Children's rights

(a) The LEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.
(b) Under the regulations for FERPA at 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.
(c) If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of 18, consistent with NC 1504-1.21, the rights regarding educational records in NC 1505-2.4 through NC 1505-2.15 must also be transferred to the student. However, the LEA must provide any notice required under section 615 of the IDEA to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.625)

NC 1505-2.17 Enforcement

The SEA has in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with NC 155-2.2 through NC 1505-2.16 are followed and that the requirements of the IDEA and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.626)

NC 1505-2.18 Department use of personally identifiable information

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c); 34 CFR 300.627)

NC 1505-3 Reports – Program Information

NC 1505-3.1 Annual report of children served—report requirement.

The SEA must annually report to the Secretary on the information required by section 618 of the IDEA at the times specified by the Secretary.
The SEA must submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1418(a)(3); 34 CFR 300.640)

NC 1505-3.2 Annual report of children served--information required in the report

(a) For purposes of the annual report required by section 618 of the IDEA and NC 1505-3.1, the LEA and SEA must count and report the number of children with disabilities receiving special education and related services on December 1 of each year.
(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.
(c) The LEA and SEA may not report a child under more than one disability category.
(d) If a child with a disability has more than one disability, the LEA and SEA must report that child in accordance with the following procedure:
    (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."
    (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."
(e) December 1 - Individuals with Disabilities Education Act (IDEA), P.L. 105-17 child count report. The December 1 child count is used to generate federal funds for children with disabilities ages 3 through 21 under the Individuals with Disabilities Act, P.L. 91-230, as amended by P.L. 94-142, P.L. 99-457, P.L. 101-476 and 105-17. Preschool grant funds are not generated by child count but are based upon 75% of the 1997 grant award allocated to states and the remaining 25% being split as follows: 85% of the remaining funds based upon the number of 3 through 5 year olds (census) and 15% of the remaining funds based upon the number of 3 through 5 year olds living in poverty. (State funding is based on a combined count of all categories for children ages 5 through 21 in the December child counts and adjusted in the April 1 child count.) Preschool children with disabilities are included in the April 1 child count for state funding purposes. State funding for preschool children with disabilities is determined by the April 1 child count, plus a base-funding amount for each local education agency.
(f) To be eligible for counting on December 1 under Individuals with Disabilities Education Act, Part B, a child must:
    (1) Be enrolled in a special education program in a school or program which is operated/supported by a public agency which meets State Board of Education standards in Policies Governing Services for Children with Disabilities;
    (2) Be receiving special education (free appropriate public education) and related services (when appropriate) on December 1;
    (3) Be properly identified as a child with a disability; be placed in a class/program by the IEP Team or Preschool IEP Team; attain the third birthday; and be no older than age 21 at the start of the school year.

(Authority: 20 U.S.C. 1418(a), (b); 34 CFR 300.641)

NC 1505-3.3 Data reporting

(a) Protection of identifiable data. The data described in section 618(a) of the IDEA and in NC 1505-3.2 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.
(b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Authority: 20 U.S.C. 1418(b); 34 CFR 300.642)

NC 1505-3.4 Annual report of children served--certification

The LEA and SEA must include in the report a certification signed by an authorized official of the agency that the information provided under NC 1505-3.1 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1418(a)(3); 34 CFR 300.643)

NC 1505-3.5 Annual report of children served--criteria for counting children

The LEA and SEA may include in the report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that--
(a) Provides them with both special education and related services that meet State standards;
(b) Provides them only with special education, if a related service is not required, that meets State standards; or
(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the IDEA and receive special education or related services or both that meet State standards under NC 1501-6.3 through NC 1501-6.15.

(Authority: 20 U.S.C. 1418(a); 34 CFR 300.644)

NC 1505-3.6 Disproportionality

(a) General. The State must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--
    (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;
    (2) The placement in particular educational settings of these children; and
    (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.
(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State must--
    (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.
    (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early

intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1418(d); 34 CFR 300.646)

NC 1506 AUTHORIZATION, ALLOTMENT, USE OF FUNDS, AND AUTHORIZATION OF APPROPRIATIONS

NC 1506-1 Allotments, Grants, and Use of Funds

NC 1506-1.1 Grants to States

(a) Purpose of grants. The Secretary makes grants to States, outlying areas, and freely associated States (as defined in NC 1506-2.11), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the IDEA.

(b) Maximum amount. The maximum amount of the grant a State may receive under section 611 of the Act is--

- (1) For fiscal years 2005 and 2006--
  - (i) The number of children with disabilities in the State who are receiving special education and related services--
    - (A) Aged three through five, if the State is eligible for a grant under section 619 of the IDEA; and
    - (B) Aged six through 21; multiplied by--
  - (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and
- (2) For fiscal year 2007 and subsequent fiscal years--
  - (i) The number of children with disabilities in the 2004-2005 school year in the State who received special education and related services--
    - (A) Aged three through five if the State is eligible for a grant under section 619 of the IDEA; and
    - (B) Aged six through 21; multiplied by
  - (ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States;
  - (iii) Adjusted by the rate of annual change in the sum of--
    - (A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the IDEA; and
    - (B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.

(Authority: 20 U.S.C. 1411(a) and (d); 34 CFR 300.700)

NC 1506-1.2 Allocations to States

(a) General. After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the IDEA for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the IDEA for the preceding fiscal year, those allocations are calculated as follows:

(1) Allocation of increase.—

(i) General. Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year--

(A) To each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged three through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the IDEA; and

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

(ii) Data. For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) Preceding year allocation. No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) Minimum. No State's allocation may be less than the greatest of--

(A) The sum of--

a. The amount the State received under section 611 of the IDEA for fiscal year 1999; and

b. One third of one percent of the amount by which the amount appropriated under section 611(i) of the IDEA for the fiscal year exceeds the amount appropriated for section 611 of the IDEA for fiscal year 1999;

(B) The sum of--

a. The amount the State received under section 611 of the IDEA for the preceding fiscal year; and

b. That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the IDEA from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of--

a. The amount the State received under section 611 of the IDEA for the preceding fiscal year; and

b. That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the IDEA from the preceding fiscal year.

(iii) Maximum. Notwithstanding paragraph (c)(2)(ii) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of--

(A) The amount the State received under section 611 of the IDEA for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the IDEA from the preceding fiscal year.

(3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(d) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the IDEA for the preceding fiscal year, those allocations are calculated as follows:

(1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of--

(i) 1999 amount. The amount the State received under section 611 of the IDEA for fiscal year 1999; and

(ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the IDEA for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) Amounts equal to or less than fiscal year 1999 allocations.--

(i) General. If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(d); 34 CFR 300.703)

NC 1506-1.3 State-level activities

(a) State administration.

(1) For the purpose of administering Part B of the IDEA, including paragraph (c) of this section, section 619 of the IDEA, and the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities, each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the IDEA for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts--

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the IDEA for fiscal year 2004; and

(ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the IDEA are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the IDEA, if the SEA is the lead agency for the State under that Part.

(b) Other State-level activities.

(1) The State may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation.
(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section--
(A) For fiscal years 2005 and 2006, nine percent of the State's allocation.
(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:
(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation.
(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:
(A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation.
(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:
(i) For monitoring, enforcement, and complaint investigation; and
(ii) To establish and implement the mediation process required by section 615(e) of the IDEA, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:
(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;
(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;
(iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;
(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;
(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

(xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.

(c) Local educational agency high cost fund.

(1) In general--

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section--

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.

(2) (i) The State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) The State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(3) (i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, the State plan for the high cost fund. The State plan must--

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum--

a. Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

b. Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of NC 1501-3.1 through NC 1501-3.5;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section;

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

(4) (i) The SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with NC 1501-3.1, to implement a child's IEP.

(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(6) Nothing in paragraph (c) of this section--

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the IDEA to receive FAPE pursuant to section 612(a)(1) of the IDEA in the least restrictive environment pursuant to section 612(a)(5) of the IDEA; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section.

(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.

(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs during their final year of availability.

(d) Inapplicability of certain prohibitions. The State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to--
(1) The prohibition on commingling of funds in NC 1501-12.5(b).
(2) The prohibition on supplanting other funds in NC 1501-12.5(c).

(e) Special rule for increasing funds. The State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1411(e); 34 CFR 300.704)

NC 1506-1.4 Subgrants to LEAs

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under NC 1506-1.3 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that became available on July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under NC 1506-1.2, each State shall allocate funds as follows:
(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the IDEA for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the IDEA, as that section was then in effect.
(2) Base payment adjustments. For any fiscal year after 1999--
(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under NC 1506-1.2(b), currently provided special education by each of the LEAs;
(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and
(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under NC 1506-1.2, currently provided special education by each affected LEA.
(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the

LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that became available on July 1, 2009.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must--

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) Reallocation of LEA funds.

(1) If the SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to NC 1506-1.3.

(2) After the SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to NC 1506-1.3.

(Authority: 20 U.S.C. 1411(f); 34 CFR 300.705)

NC 1506-1.5 Behavior support services

(a) Funding.

(1) Behavioral Support Service Funds (PRC 29) are allotted on a needs basis. All requests for funds must include a completed Behavioral Support Service Funding Request form (with appropriate signatures) and a copy of the student's IEP. The IEP shall address all the required components as delineated in NC1503-5.1.

(2) Funds are designated as add-on funds. They are to be used to make the "critical difference" in the successful development and implementation of the IEP. These funds may not be used to supplant or replace other funding sources (e.g., state aid exceptional children funds). They are to be used only to provide services to children with disabilities and accompanying chronic and acute behavioral/emotional needs including students previously served by Department of Health and Human Services as Willie M class members. Requests for funds are evaluated according to the following criteria.

(i) Prioritization will be given to: innovative and creative grant proposals that are designed to make the critical difference to ensure successful IEP implementation and positions and services previously funded through state aid to local administrative units (PRC 29) that have been effective in providing behavioral support services essential to

enhance educational performance of children with disabilities and accompanying chronic and acute behavioral/emotional needs. Examples of innovative programming include, but are not limited to:

(A) Parent outreach efforts;
(B) Efforts to return dropouts to school;
(C) Extended school day programming;
(D) Job skill acquisition linked to academic success
(E) Interagency programming designed to implement a "24-hour" plan;
(F) Involvement of community/business agencies and personnel;
(G) Staff development;
(H) Alternative programming that addresses both academics and pro-social behavior;
(I) Direct, systematic instruction that increases instructional time;
(J) Preventive and proactive efforts to decrease the use of out-of-school suspensions for students with disabilities;
(K) Peer involvement and positive role modeling;
(L) Crisis intervention/liaison specialist;
(M) Assessment/prescriptive specialist to assist in programming.

(ii) The following variables will be given priority consideration when determining justification for LEA grant allocations:

(A) Specified group home(s), residential treatment center(s), therapeutic home(s), and Individual Residential Treatment (IRT);
(B) Number of children with disabilities and accompanying chronic and acute special behavioral/emotional needs whose domicile and enrollment in the LEA is attributable to the provision of residential treatment services;
(C) Presence of day treatment program;
(D) Presence of a student(s) with a low incidence, high cost disability;
(E) Presence of a student with disabilities and accompanying chronic and acute special behavioral/emotional needs;
(F) Utilization of previous funds;
(G) Other unique situations not described above.

(3) Funds not utilized as approved must be returned as soon as it is determined that the needs stipulated and funded by the original grant proposal no longer exist or have been modified.

(b) In case of cooperative treatment and education programs in which the program is located in a facility other than a public school building, the following procedures will apply:

(1) Any student who attends the program for his/her full educational services will be counted in the ADM of the local school administrative unit which is supervising the program until the student returns to full-time status in his/her sending school administrative unit;
(2) Any student who attends the day treatment and educational program on a part-time basis will remain in the ADM of the sending school administrative unit.

(c) Monitoring. The Department of Public Instruction through the Exceptional Children Division will monitor all local school administrative units and/or other facilities that are providing educational services to determine if the program is appropriate to meet the needs of the child.

NC 1506-1.6 Community residential centers

Funds for Community Residential Centers.

(a) State categorical funds will be allocated to the LEA based on a child count of eligible children with disabilities receiving their special education and related service in a community residential center. The child count(s) will be done by the local education agency where the community residential center is located. Funding for special education and related services in the community residential

center will be approved only after the IEP Team in the local education agency where the community residential center is located has determined that the least restrictive environment is the community residential center. If it is determined that the least restrictive environment is the local education agency, the community residential center will be ineligible for educational funding.

(b) The local education agency may request the per child allocation for one year for any child served in the community residential school program prior to entering the local education agency. These funds are allocated only when funds are available.

(c) Transportation for all children served in the local education agency residing in a community residential center shall be borne by the local education agency.

(d) The rate of funds per child shall be determined by the Exceptional Children Division. The rate of funds will be allocated at a per child rate determined annually by the Exceptional Children Division and School Financial Services. Special Community Residential Center funds are based on the actual months of service up to 180 school days and may include extended school year when it is deemed appropriate by the IEP Team and written into the child's IEP. Funds shall be used to provide for educational and related services, including personnel, supplies, materials and educational equipment.

(e) The amount of funds allocated to the community residential centers per child and per month will be based on a recommendation to the Associate Superintendent for Financial Services by the Director of the Exceptional Children Division.

(f) The local education agency where the community residential center is located shall certify to the State Board of Education that the educational placement has been approved by the IEP Team.

(g) The residential placement in a community residential center must be approved by the community residential center and IEP team before a special education placement can be considered.

(h) All children approved for residential services in the community residential center must have the least restrictive environment determined by the IEP Team in the local education agency where the community residential center is located.

(i) All withdrawals of children served in community residential centers must be submitted monthly (no later than 10 days after withdrawal has occurred) to the Director of the Exceptional Children Division. If another child is approved for placement in a community residential center the child's name, date of birth, disabling condition, and date added to roster must accompany the withdrawal notification which lists the child's name, date of birth, disabling condition, local education agency where parents/guardians have legal residence, and date of withdrawal.

(j) May 15th of each year is the deadline for submission of these applications.

NC 1506-1.7 Developmental day centers

Developmental Day Centers.

(a) State categorically appropriated funds will be allocated to local education agencies at a per month per child rate determined annually by the Exceptional Children Division and Financial and Personnel Services. Special developmental day center funds are based on the actual months of service up to 180 school days and shall provide for educational services, including personnel, supplies, materials and educational equipment for children with disabilities ages three through 21.

(b) Local education agencies whose developmental day center expenditures per child exceed the rate approved by the State Board may provide for the additional cost from other available funds.

(c) Once a child is transferred from the developmental day center and is to be served in the local education agency by agreement between the two governing bodies, the local education agency will then be eligible for an allocation at a per month per child rate established by the Exceptional Children Division if funds are available under two conditions:

(1) A school age child (five through 21) who was placed in a developmental day center and is now being served by the local education agency. These funds are for the initial year of the transfer only. This provision is not for disabled preschool children placed in developmental

day centers for preschool disability services who are now entering the local education agency at age five for kindergarten; and

(2) Local education agencies that have developmental day programs that have closed and there are no other developmental day programs available. The local education agency is entitled only to the amount of funding received the previous year. The allocation is for preschool and school age children with disabilities served in the center that closed.

(d) Children served in developmental day centers may be counted for federal funds.

(e) Developmental day center child counts, external to local education agencies, are not included in the projected regular average daily membership.

(f) If the decision is to place the child in the developmental day center(s), the local education agency must submit the following information to the Exceptional Children Division:

(1) Name of center;

(2) Number of children;

(3) Name and date of birth of each child;

(4) Type of disabling condition of each child;

(5) Rate per month per child (including a breakdown of center's educational costs per month for teachers' salaries, fringe benefits, support services such as occupational therapists, physical therapists, speech, etc.);

(6) Copy of contract/agreement with center;

(7) All required information (i-vi) must be submitted to Director, Exceptional Children Division, for review and approval. Following review and approval by the Exceptional Children Division, Financial Services will be notified to allocate funds to the requesting local education agency.

(g) Personnel employed by local boards of education and/or independently operated developmental day centers may be employed for ten months.

(h) These funds are for children ages three through 21 to provide special education and related services for no more than 180 school days.

(i) All withdrawals of children from developmental day centers must be reported monthly to the Exceptional Children Division. If another child is approved for placement in a developmental day center, the child's name, date of birth, disabling condition, and date withdrawn must be reported no later than 10 days after withdrawal.

(j) Funding is based upon availability of funds.

(k) May 15th of each year is the deadline for submission of these applications.

NC 1506-1.8 Group home placements

Group Home Placements.

(a) NCDPI shall reserve an amount annually of state funding to provide special education and related services for the first-year placement of children with disabilities in residential group homes.

(b) A local education agency is eligible for group home funds for the initial year of group home placement only if the child has not been counted in either the December 1 or revised April 1 child counts or projected regular average daily membership. After the initial enrollment, the local education agency serving the child will count the child and will be eligible for the state and federal add-ons approved on a prorated annual basis. Only children who have been determined eligible for special education and related services prior to entering the group home are eligible for group home funds. A child who is determined eligible for special education and related services after entering the group home is not eligible for group home funds.

(c) Special allotments for children who have not been counted by local education agencies for educational allocations will be made on a pro rata annual basis according to the following formula:

(1) Regular allocation;

(2) State add-on (children with disabilities);

(3) Federal add-on (Title VI-B only); plus

(d) Upon application for funds for initial year of placement, each local education agency shall submit to the Director of the Exceptional Children Division:
(1) Name of child;
(2) Name and location of group home;
(3) Date of birth of each child;
(4) Category of disability; and
(5) Type of program to be provided.

(e) Children with disabilities and accompanying chronic and acute behavioral/emotional needs are eligible for Behavioral Support Services funds or group home funds, not both.

(f) Without regard to the place of domicile of a parent or guardian, the cost of free appropriate public education for a student with a disability who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State or federal laws, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a student with a disability in a group home, foster home and similar facility. Funding is based on availability.

(g) May 15th of each year is the deadline for submission of these applications.

(Authority: 20 U.S.C. 1411(e); 34 CFR 300.705)

NC 1506-1.9 Out-of-district placements

Out-Of-District Placements. The State Board of Education (or its designee) may approve the use of the reserve fund toward the payment of the excess cost of the placement of a child in a program not operated by the local board of education within funds available and subject to the following conditions:

(a) State Board of Education review reveals that the local education agency has approved alternative placement and the education agency finds it is necessary for the child to be placed in a program not operated by the local board of education in order to receive an educational program or service which will appropriately meet the child's special educational needs;

(b) The local education agency must fund an amount equal to the sum of the following per pupil allocations:
(1) The state's regular per pupil allocation for school-aged children;
(2) The state's add-on per pupil allocation for exceptional children; plus
(3) The federal per pupil allocation for exceptional children.
If the sum of those per pupil allocations does not cover the cost of the alternative placement, then the reserve fund may be approved, but in no case will the reserve fund pay more than fifty percent of the total cost of the alternative placement. Any cost then remaining must be assumed by the local education agency, using any local, state or federal funds approvable for such expenditure. Financial Services, State Department of Public Instruction, shall reimburse the local board of education for any reserve funds approved by the State Board of Education.

(c) Funds must be used only to provide special education and related services costs; residential costs; and extended school year when it has been determined by the IEP committee that extended year is required as part of the IEP. Funds must not be used for medical, custodial, or day care services.

(d) When a private residential placement has been determined to be the most appropriate placement for a child with a disability, all in-state residential programs should be the first consideration of placement. The local education agency should exhaust all possible in-state residential placements before placing a child out-of-state. All children placed in out-of-district school settings are entitled to the same rights and procedural safeguards as provided to those children whose IEPs are implemented in the local education agency.

(e) Any application for a special reserve fund allocation must be submitted prior to enrolling the child in the program.
(f) Each out-of-district placement must be reviewed annually. Continued placement must be based on the least restrictive educational placement.
(g) All withdrawals from out-of-district placements must be reported no later than 10 days after the withdrawal has occurred. The withdrawal notification must include the child's name, date of birth, disabling condition, and date of withdrawal. Additional children cannot be placed in programs of children who have withdrawn from enrollment. A complete application for placement must be submitted to the Exceptional Children Division.
(h) May 15th of each year is the deadline for submission of these applications

(Authority: 20 U.S.C. 1411(e); 34 CFR 300.705)

NC 1506-1.10 Risk pool

A reserve has been established for LEAs with "high needs" students with disabilities from state set-aside funds from IDEA 611 grant funds. The costs of the educational services must impact the resources of the LEA serving the student. The allocation is based on an approved budget submitted by the LEA.
(a) The LEA must address the following information before eligibility can be determined for funding:

(1) Financial impact on the LEA.
(2) Ranking on Poverty Index, number of children over the 12.5% cap, and receipt of local funding.
(3) Number of "high needs" students with disabilities currently being served.
(4) Ensure that the cost of the student is three times the average per pupil expenditure.
(5) State Exceptional Children, IDEA, Title VI, Part B, and Average Daily Membership (ADM) allocation must be documented on the Risk Pool application for the student submitted for funding.
(6) Additional special education and related services needed for each student.

(b) Applications may be submitted annually if the level of needs persist.
(c) Priority is given to those students needing nursing, personal care, and assistive technology.
(d) May 15th of each year is the deadline for submission

(Authority: 20 U.S.C. 1411(e); 34 CFR 300.705)

NC 1506-1.11 Special state reserve

Special State Reserve.
(a) The North Carolina Department of Public Instruction will provide Special State Reserve funds for emergency situations for children and youth with disabilities.
(b) These funds are available to local education agencies and charter schools who have high cost students with disabilities entering school after all budgets are set and funds are committed. These funds are for educational services and personnel.
(c) Each child should be submitted on an application developed by the Exceptional Children Division and disseminated annually. The Exceptional Children Division reviews each application. The application includes student information, narrative description of services, funds needed, end-of-year update and certification of application. Notification of approval and/or disapproval is forwarded to appropriate agencies.
(d) May 15th of each year is the deadline for submission of these applications.

(Authority: 20 U.S.C. 1411(e); 34 CFR 300.705)

NC 1506-1.12 Special small schools

Special Small Schools.

(a) Provision is made for a separate allotment of teachers to be used in programs serving children with disabilities from more than one local school administrative unit;

(b) Special allotments may be made to selected local boards of education for teachers to serve children with disabilities for the following purposes:

(1) Large general or special hospitals; or

(2) Special regional programs for children with disabilities.

NC 1506-1.13 Transportation

(a) Local boards of education are responsible for providing or paying the costs of transportation for children with disabilities enrolled in schools or programs in their local school systems and are responsible for providing or paying the costs of transportation to any private residential or non-residential program, if the student has been placed in or assigned to that private program by the local board of education. Transportation funds for this purpose may be provided through local boards of education annual transportation budget allotments which are administered by the School Support Division, North Carolina Department of Public Instruction. These funds are incorporated in the general transportation plan of each local board. For preschool children with disabilities, payment of such transportation costs must be made from either federal or state preschool program funds.

(b) If a child with disabilities is assigned to or enrolled in any residential or non-residential program operated by or under the jurisdiction or control of the Department of Health and Human Services, the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, the Department operating the program or having the program under its jurisdiction or control is responsible for providing or paying the costs of transportation. This is applicable for programs for school age students with disabilities as well as programs for preschool children with disabilities. The only exception is when a child is enrolled in a local school system and is counted for funding purposes by the school system, but attends a class or classes at a Department of Health and Human Services program. In this case, the local school system is responsible for providing the transportation to the Department of Health and Human Services program and return to the local school system or home.

(c) If a local area mental health center places a child with disabilities in an educational program, the local area mental health center shall pay for the transportation of the child to/from the program.

(d) The costs of transportation for a child with disabilities placed in or assigned to a school or program outside the state shall be paid by the local educational agency or state operated agency placing or assigning the child in that school or program.

(e) In no event shall reimbursement for the costs of transportation paid for any one child exceed the School Support Division allowance per mile unless it is demonstrated by the child or his/her parent that such limitation will work a hardship or is unreasonable. This justification must be approved by the local educational agency and appropriate state agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1411(f); 34 CFR 300.705)

NC 1507 PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

NC 1507-1 In General

The State provides grants under section 619 of the IDEA to assist LEAs to provide special education and related services in accordance with Part B of the IDEA to three and four year-old children with disabilities and those five year-old children with disabilities who are not eligible for kindergarten.

(Authority: 20 U.S.C. 1419(a); 34 CFR 300.800)

NC 1507-2 Eligibility

An LEA is eligible for a grant under section 619 of the IDEA if the LEA--
(a) Is eligible under section 612 of the IDEA to receive a grant under Part B of the IDEA; and
(b) Makes FAPE available to all children with disabilities, aged three through five, residing in the LEA.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1419(b); 34 CFR 300.804)

NC 1507-3 Eligibility for Financial Assistance

No LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the IDEA that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the IDEA.

(Authority: 20 U.S.C. 1481(e); 34 CFR 300.806)

NC 1507-4 Allocations

The SEA allocates the amount made available to carry out section 619 of the IDEA for a fiscal year among the LEAs.

(Authority: 20 U.S.C. 1419(c)(1); 34 CFR 300.807)

NC 1507-5 Reservation for State Activities

(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with NC 1507-6 and NC 1507-7.
(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of –
    (1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or
    (2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Depart of Labor.

(Authority: 20 U.S.C. 1419 (d); 34 CFR 300.812)

NC 1507-6 State Administration

(a) For the purpose of administering section 619 of the IDEA (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve for any fiscal year.
(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the IDEA.

(Authority: 20 U.S.C. 1419(e); 34 CFR 300.813)

NC 1507-7 Other State-Level Activities

The SEA must use any funds the State reserves and does not use for administration -
(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the IDEA), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;
(b) For direct services for children eligible for services under section 619 of the IDEA;
(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the IDEA;
(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of the amount received by the State under section 619 of the IDEA for a fiscal year; or
(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the IDEA to children with disabilities who are eligible for services under section 619 of the IDEA and who previously received services under Part C of the IDEA until such children enter, or are eligible under State law to enter, kindergarten.

(Authority: 20 U.S.C. 1419(f); 34 CFR 300.814)

NC 1507-8 Subgrants to LEAs

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under NC 1507-5 to LEAs in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, even if the LEA is not serving any preschool children with disabilities.

Note: Public charter schools in North Carolina are not eligible for section 619 grant funds because the state statute prohibits charter schools from operating preschools.

NC 1507-9 Allocations to LEAs

(a) Base payments. The SEA must first award each LEA described in NC 1507-7 the amount that agency would have received under section 619 of the IDEA for fiscal year 1997 if the SEA had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(b) Base payment adjustments. For fiscal year 1998 and beyond--
   (1) If a new LEA is created, the SEA must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs;
   (2) If one or more LEAs are combined into a single new LEA, the SEA must combine the base allocations of the merged LEAs; and
   (3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA.
   (4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three years through five years currently provided special education for each of the LEAs. This requirement takes effect with funds that became effective July 1, 2009.

(c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the SEA must--
   (1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and
   (2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(d) Use of best data. For the purpose of making grants under this section, the SEA must apply on a uniform basis across all LEAs the best data that are available to it on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1419(g)(1); 34 CFR 300.816)

NC 1507-10 Reallocation of LEA Funds

(a) If the SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed to provided FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three to five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to NC 1507-5.

(b) After the SEA distributes section 619 funds to an eligible LEA that is not serving any children with disabilities aged three through five years, as provided in NC 1507-7, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related service to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to NC 1507-5.

(Authority: 20 U.S.C. 1419(g)(2); 34 CFR 300.817)

NC 1507-11 Part C of the Act Inapplicable

Part C of the IDEA does not apply to any child with a disability receiving FAPE, in accordance with Part B of the IDEA, with funds received under section 619 of the IDEA.

(Authority: 20 U.S.C. 1419(h); 34 CFR 300.818)

NC 1508 CLASS SIZE: SCHOOL AGE AND PRESCHOOL

NC 1508-1 Class Size: School Age and Preschool

(a) Local educational agencies must assure that all levels of the continuum of programs and services are available, considered and utilized for children with disabilities. The class size or caseload of a special education teacher, speech-language pathologists, and related services provider shall:
   (1) allow for the implementation of each assigned student's IEP that must address both academic progress (i.e. access and progress in the general curriculum, including participation in district-wide and state-wide assessments) and functional performance;
   (2) be determined by the nature and severity of the student's disability;
   (3) be determined by the students' ages and/or grade placements;
   (4) be determined by the type and intensity of services required by the IEP; and
   (5) be determined by the actual number of tasks that the special education teachers/service provider must complete in addition to daily instructional activities (workload); and
   (6) be within the prescribed requirements of Appendices A and B of this section.

(b) Compliance with this policy shall be monitored through the continuous improvement focused monitoring system, the LEA's continuous improvement performance plan, and the dispute resolution process.

(c) Whenever the pupil-teacher ratio for a class period/caseload exceeds the requirements of this section, the class size enrollment form and request for waiver must be submitted to the Exceptional Children Division.

NC 1508-2 Student/Teacher Ratio for Preschool Children with Disabilities

(a) Regular Early Childhood Program (RECP), Separate, and Other Settings: Caseload requirements must be flexible enough to provide for appropriate services in direct accord with the children's identified needs. Consideration must be given to each child's developmental level, severity of disability, and nature and level of services required to allow children to progress at appropriate learning rates in accomplishing specific goals. RECP (Inclusive) and Separate Settings that serve preschool children with disabilities should not exceed a ratio of 6 children to 1 adult. For more severely delayed children, additional assistants and/or lower adult-child ratios may be necessary to serve children.

(b) Residential setting: up to 5 children, 1 teacher; 6 to 8 children, 1 teacher, 1 assistant; 9 to 12 children, 1 teacher, 2 assistants.

(c) Itinerant Preschool Services: Services to preschool children with disabilities are often provided by itinerant teachers and therapists in settings outside school center-based programs such as private childcare, non-LEA administered Head Start, faith-based preschools, in homes, etc. Although no minimum or maximum caseload is defined, it must be flexible enough to provide for appropriate services as described in the child's individualized education program.

NC 1508-3 **Class Size Chart**

SPECIAL EDUCATION CLASS SIZE REQUIREMENT per Teacher
Number of Special Education Students and Teacher Assistants

Special Education Service Delivery	Elementary		Middle School		High School		
	Standard Course of Study	**Standard Course of Study Extended Content Standards**	**Standard Course of Study**	**Standard Course of Study Extended Content Standards**	**Standard Courses of Study [5]**	**Standard Course of Study Occupational**	**Course of Study Extended Content Standards**
Special Education General Skills [1]	12 Students	10 Students	14 Students	12 Students	14 Students	14 Students 1 Teacher Assistant (Job Coach) [6]	12 Students
Special Education Targeted Skills [2]	10 Students Or 12 Students 1 Teacher Assistant	8 Students Or 10 Students 1 Teacher Assistant	12 Students Or 14 Students 1 Teacher Assistant	8 Students Or 10 Students 1 Teacher Assistant	12 Students Or 14 Students 1 Teacher Assistant	14 Students 1 Teacher Assistant (Job Coach)	10 Students
Special Education Sustained Support [3]	12 Students 1 Teacher Assistant	10 Students 1 Teacher Assistant	12 Students 1 Teacher Assistant	10 Students 1 Teacher Assistant	14 Students 1 Teacher Assistant	14 Students 1 Teacher Assistant (Job Coach)	12 Students 1 Teacher Assistant
Special Education Intensive Needs [4]	8 Students 1 Teacher Assistant	6 students 1 Teacher Assistant or 8 Students 2 Teacher Assistants	8 Students 1 Teacher Assistant	6 Students 1 Teacher Assistant or 8 Students 2 Teacher Assistants	8 Students 1 Teacher Assistant	8 Students 1 Teacher Assistant or 10 Students 2 Teacher Assistants (Job coaches)	6 Students 1 Teacher Assistant or 8 Students 2 Teacher Assistants

NC 1508-3A Level of Service/Supports

Level of Services/Supports

[1] **Special Education General Skills** – Services/supports provided to individuals who require specially designed academic, communication, and/or behavior support outside the general classroom for 20% or less of the day. The services could include, but are not limited to learning strategies instruction, organizational skills training, and curriculum assistance.
[2] **Special Education Targeted Skills -** Services/supports provided to students who require specific instruction in targeted skills areas (to include but not limited to: reading, math, written expression, social skills) outside the general education classroom from 21% - 60% of the day. Special targeted skills groups can range from 1-14 students with consideration given to any specific guidelines governing group size composition for any methodologies adopted by the LEA.
[3] **Special Education Sustained Support** – Services/supports outside the general education classroom for greater than 60% of the day, to students who require extensive explicit instruction to acquire maintain and generalize multiple skills. Students may have documented health, communication, sensory, and/or behavior problems. Periodic immediate support and supervision are required throughout the day.
[4] **Special Education Intensive Needs** – Services/supports outside the general education classroom to students who require extensive and explicit instruction to acquire, maintain, and generalize multiple skills. Students receive extensive, direct special education services for greater than 60% of the school day and require constant immediate supervision. The students may have persistent documented health, communication, and/or behavior problems. The students require an instructional pace requiring individual and small group instruction and have substantial behavioral or physical needs.
[5] **Future-Ready Core Course of Study** – The Standard Course of Study (College/University, College Tech Prep, Career Prep) will become the Future-Ready Core Course of Study, effective with the 9th grade class of 2009-2010.
[6] **Occupational Course of Study** – Number of assistants (job coaches) will vary depending on the actual work-based requirements of the Occupational Course of Study.

NC 1508-4 Total Caseload

Total Caseload

Elementary Special Education General/Targeted Skills – Not to Exceed 35 Students
Middle and High School General/Targeted Skills –Not to Exceed 50 Students
Related Service Providers – Not to Exceed 50 Students

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